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COMPILATION
— OF —
TAX LAWS AND JUDICIAL
DECISIONS
OF THE STATE OF ILLINOIS

MADE BY
RALPH H. WILKIN

UNDER THE DIRECTION OF THE STATE TAX COMMISSION.

FRANK F. NOLEMAN, *Chairman*,
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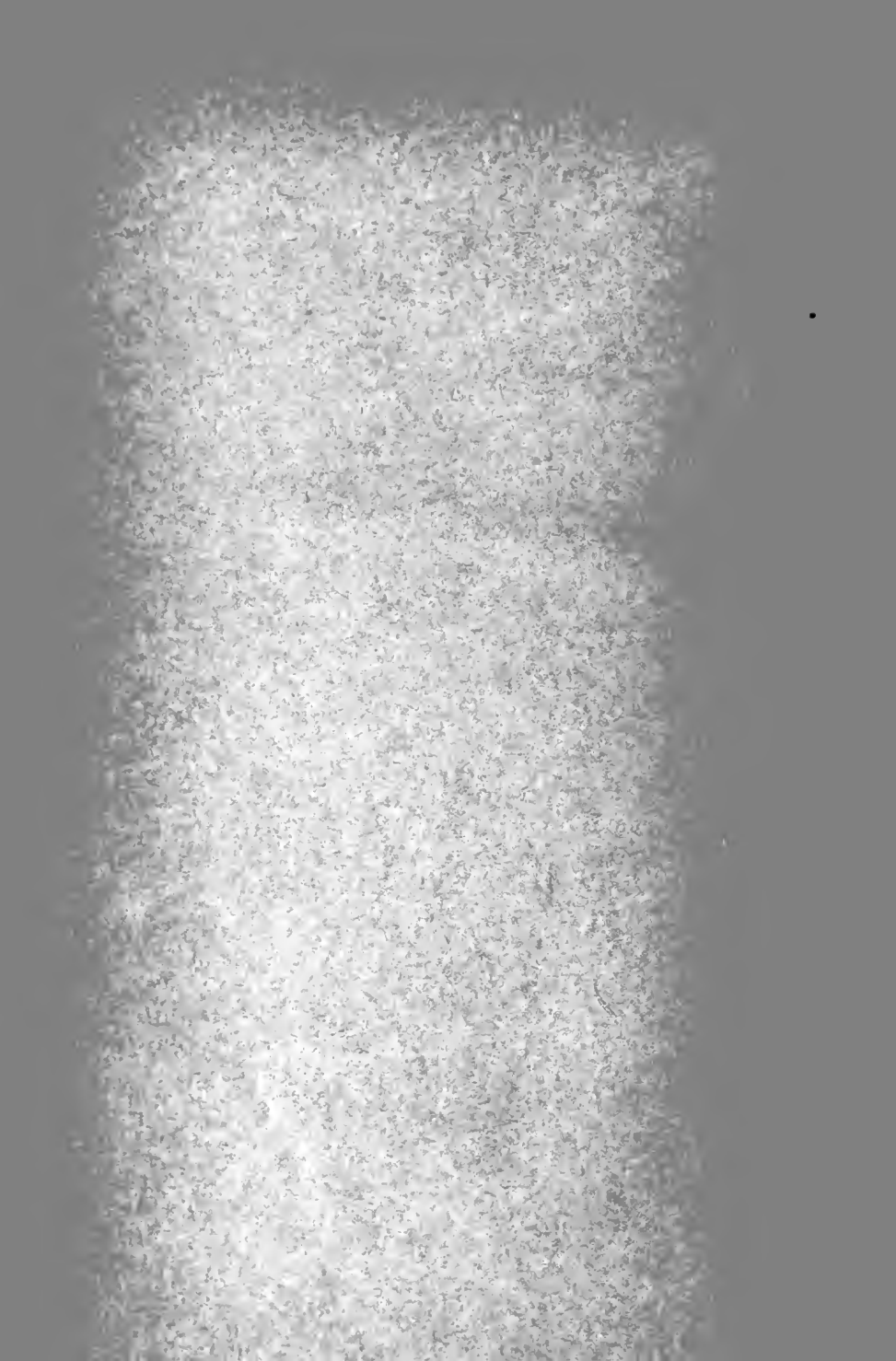
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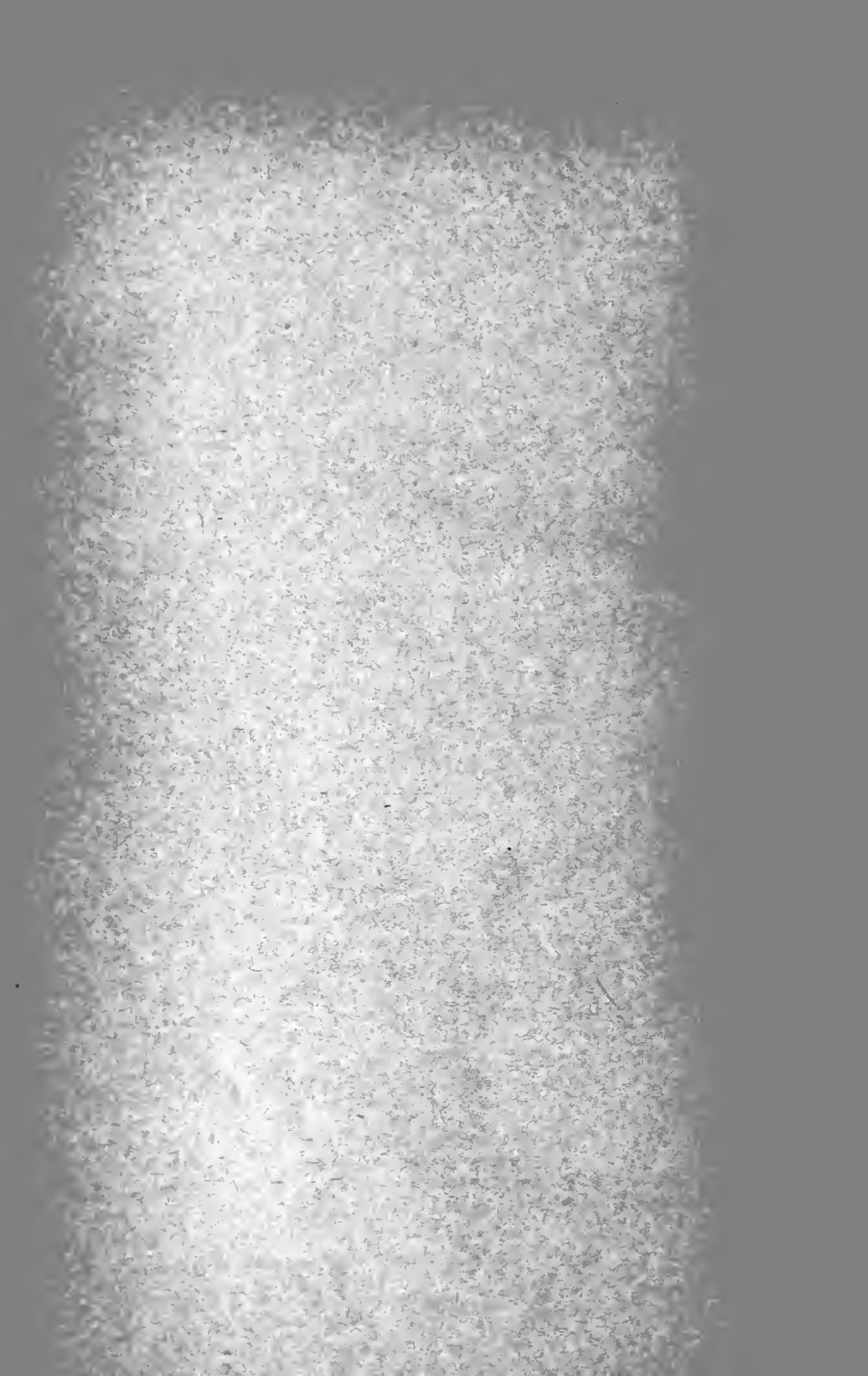
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PREFATORY NOTE

The State Tax Commission was created by an Act of the General Assembly approved June 19, 1919 (Laws 1919, page 718). By this Act all the powers and duties imposed upon the State Board of Equalization and upon the Auditor of Pubile Accounts in relation to the assessment of property for taxation was transferred to and to be exercised and performed by the Tax Commission, and whenever in any law relating to assessment of property for taxation, abstracts, reports or schedules or other papers or documents, are required to be filed with, or any duty is imposed upon, or power vested in either the Auditor or Board of Equalization, such abstracts, etc., shall be filed with, such duty and power shall be discharged and exercised by the Tax Commission. A note to that effect has been added to each section of the Revenue statutes in this compilation to which it is deemed applicable. The annotations of decisions made by Mr. Albert M. Kales and Elmer M. Liessmann and published under direction of the Speeial Tax Commission in 1909 have been reprinted so far as applicable to the present law.



UNDER THE FEDERAL CONSTITUTION.

The State cannot tax property which has no situs therein, either actual or constructive, as property outside the jurisdiction of a State cannot be taxed within the due process of law clause of the fourteenth amendment to the Federal constitution. *Keith Equipment Co. vs. Board of Review*, 283—244.

Inter-State commerce is not taxed by taxing property devoted to such use, and property used in inter-State commerce is not exempt from taxation by the State. *People vs. Bridge Co.*, 287—246; *Same vs. Illinois*, 175 U. S. 626.

The right to water power, which is an interest in real estate, is exempt where situs of such power is a place over which Congress has exclusive power of legislation. *Moline Power Co. vs. Cox*, 252—348, 358.

Merchandise may cease to be interstate commerce at an intermediate point between the place of shipment and ultimate destination; and if kept at such point for the use and profit of owners and under the protection of the laws of the State it becomes subject to the taxing power of the State. *General Oil Co. vs. Crain*, 209 U. S. 211.

The State may tax movables of a foreign corporation, which are regularly and habitually employed therein, although devoted to interstate commerce, but the taxation of property of a foreign corporation by a state, the property not having come within its borders, violate the due process of law clause of Fourteenth Amendment to Federal Constitution. *Union Tank Line vs. Wright*, 249 U. S. 275.

A special Act prior to Constitution of 1870 giving authority to aid improvements by donations or subscriptions, and levy taxes to pay the same, is part of the contract with the parties making improvements, and a subsequent constitutional provision limiting the rate of taxation is inapplicable so far as in conflict therewith. *Peoria, D. and E. R. Co. vs. P.*, 116—401.

The Act of 1867 (2 L, 1867, p. 6, June 13) which imposed a tax on the individual stockholders of banks, included national banks. This was not a violation of the Federal Constitution. *MacVeagh vs. Chicago*, 49—318; *MacVeagh vs. Neuhaus*, 49—330.

It is lawful to impose a tax discriminating against foreign corporation, in favor of domestic corporation of same character, because foreign corporations do business in this State only by comity. *Ducat vs. Chicago*, 48—172, affirmed 10 Wall (U. S.) 410.

The State authorities may not tax property in course of transportation from one State to another, over one of our navigable rivers, or over any of the public highways of the country, while it is in transit, even though it should be detained by low water or ice, or other cause. *Burlington L. C. vs. Willetts*, 118—559.

Logs shipped from one State to leased premises in another State and there kept and sent for shipment into a third State as needed, are not in transit but are subject to tax by the State of the leased premises. *Burlington Lumber Co. vs. Willetts*, 118—559, approved 209 U. S. 230.

Oil passing from one State to another in pipe lines is not liable to taxation by the State through which it passes. *Prairie Oil & Gas. Co. vs. Ehrhardt*, 244—634.

Grain in transit from one State to another, but which has come to rest in one State and been stored for the purpose of inspecting, weighing, cleaning, drying, sacking, grading, or mixing, or of changing ownership, even though only for convenience, may be taxed in that State. When grain so in transit is delayed, as by low water or ice, it is not taxable in that State. *People vs. Bacon*, 243—313, affirmed 227 U. S. 504.

The cars of a trunk line company from one State in transit through another and not allowed to remain in the second State longer than to be passed through the State, or if shipped to points within the State, longer than is necessary for them to be unloaded and shipped back, are not taxable in the second State. *In re Appeal of Union Tank Line Co.*, 204—347.

The State may not tax United States government bonds, held by private bankers. *City of Chicago vs. Lunt*, 52—414.

Property of the United States, whether it is used as means for execution of powers of Federal government or not is not taxable by the State. *P. vs. United States*, 93—30, approved 117 U. S. 162.

Imports stored in the government warehouse are exempt from State tax. *Siegfried vs. Raymond*, 190—428.

Goods which have been imported, and are still in the original unbroken packages in which they were imported and upon which United States duties have been paid, are not subject to state tax notwithstanding they are no longer in bonded warehouse but in warehouse of the importer. *In re Appeal of Pitkin & Brooks*, 193—269.

Imported goods in original unbroken packages are not subject to general tax. *In re Appeal of Doane & Co.*, 197—376.

ART. 9 OF ILLINOIS CONSTITUTION OF 1870.

[Introductory: Has no application to license fees as distinguished from taxes. None of the restrictions of Art. 9 of the Constitution apply to a license fee as distinguished from a tax. Thus a municipality has power to impose saloon licenses under its general power of regulation. *United States Distilling Co. vs. City of Chicago*, 112—19.

License fee is not a tax within clause of Constitution prescribing uniformity in levying taxes. Constitution of 1870 does not limit power of legislature to impose or authorize imposition of license to pursue calling. *Wiggins Ferry Co. vs. City of E. St. Louis*, 102—560; *Metropolis Theater Co. vs. Chicago*, 246—20.

Dramshop license is not a tax. *City of East St. Louis vs. Trustees of Schools*, 102—489.

City dram-shop license is not tax under Constitution of 1870 or 1848. *Lovington vs. Board of Trustees*, 99—564.

Liquor license is not a tax within the meaning of the Constitution. *City of E. St. Louis vs. Wehrung*, 46—392.

Penalty for selling liquor without license, is not a tax. *King vs. Jackson*, 2—306.

License fee on dogs, authorized by Act of May 29, 1879, not a tax, within this section. *Code vs. Hall*, 103—30.

Under the provisions of Sec. 30 as found in Starr & Curtis' Stat. 1896, p. 2225, a levy by a city of 1% tax on fire insurance companies for the maintenance, use and benefit of the fire department, is within its power of regulation. *Kunz vs. National Fire Ins. Co.*, 169—577; *Ins. Co. vs. Peoria*, 156—420.

Broker's license fee held to be a tax, and so semble it can be supported only under the power to tax. *Braun vs. Chicago*, 110—186.

Vehicle tax was sustainable only under the power to tax and not at all under the police power of the municipality as a license fee. *Harders Storage Co. vs. Chicago*, 235—58.

Fee for services rendered by state mine inspector is not tax. *C. W. & V. Coal Co. vs. P.*, 181—278.

So-called license fee exacted from Insurance Companies are sustainable as taxes under the power to tax. See cases *infra* under Sec. 2, Article 9.]

Although it has sometimes been said that a license fee exacted for the purpose of revenue is not a tax, such statement must be understood as meaning that it is not a tax in the sense of the property tax authorized by the constitution, which must be levied according to valuation, since it is a tax, and is levied by virtue of par. 41, Sec. 1, Art. 5 of Cities and Villages Act. *Condon vs. Village of Forest Park*, 278—218.

Where a tax may be lawfully levied by requiring payment of a license fee fixed by the General Assembly or the municipality authorized to levy the tax, such an occupation though lawful in itself, may be prohibited unless licensed, in order to compel the taking out of a license. *Condon vs. Village of Forest Park*, 278—218, 226.

Taxation in proportion to value — Assessment — Tax on certain classes.] Section 1. The General Assembly^a shall provide such revenue as may be needful by levying a tax, by valuation,¹ so that every person and corporation shall pay a tax in proportion² to the value of his, her or its property³—such value to be ascertained by some person or persons, to be elected or appointed in such manner as the General Assembly shall direct, and not otherwise;⁴ but the General Assembly shall have power to tax peddlers, auctioneers, brokers, hawkers, merchants, commission merchants, showmen, jugglers, inn-keepers, grocery keepers, liquor dealers, toll bridges, ferries, insurance, telegraph and express interests or business, vendors of patents, and persons or corporations owning or using franchises and privileges,⁵ in such manner as it shall from time to time direct by general law, uniform⁶ as to the class upon which it operates.⁷

a. General Assembly:

General Assembly may exercise taxing power subject only to restriction of the constitution. *Condon vs. Village of Forest Park*, 278—218, 225.

1. Valuation:

The tax-payer is entitled to honest judgment of person elected or appointed to fix the values, and a tax founded on an assessment which from corrupt and malicious motives is made excessive or rendered unequal or unfair by fraudulent practices of the officers, or whereby property is arbitrarily assessed at too high a valuation cannot be sustained. *People vs. R. Co.*, 286—576; *P. vs. Bridge Co.*, 287—246.

The method of levying a tax, aside from a tax on property according to valuation, is a matter of form and not of substance. *Condon vs. Village of Forest Park*, 278—218, 226.

It is not within the power of the legislature to provide that different classes of property shall be valued differently. *People vs. Illinois Cent. R. Co.*, 273—220, 251; *First Nat'l Bank vs. Holmes*, 246—362.

Tax levy for past year must be extended on valuation of that year and not on that of present year. *Town of Lebanon vs. Ohio, etc., R. Co.*, 77—539.

All taxes must be levied by valuation except as provided in Sec. 9, Art. 9 of Constitution. *Crane vs. West Chicago Park Commissioners*, 153—348 (1894).

“Value” means “fair cash value.” *Ill. etc., R. and C. Co. vs. Stookey*, 122—358.

Act of March 30, 1872, providing for taxation of capital stock of corporations does not violate above because it is left entirely to the legislature to determine how corporations shall be taxed, so long as it does so by general law, uniform as to the class upon which it operates. *Porter vs. Rockford, etc., R. Co.*, 76—561.

Resolutions adopted by the Board of Equalization in valuing property of corporations are valid. *Porter vs. Rockford, etc., R. Co.*, 76—561; *People's Gas Light Co. vs. Stuckart*, 286—164, 169.

The Local Improvement Act in so far as it authorizes a local improvement by special taxation of contiguous property, does not violate that provision of Sec. 1, Art. 9, of the Constitution requiring that taxes be levied according to valuation. *Harrigan vs. Jacksonville*, 220—134; *White vs. People*, 94—604; *Murphy vs. People*, 120—234; *Crane vs. West Chicago Park Comrs.*, 153—348.

2. Uniformity:

An arbitrary, known and intentional violation of the rule of uniformity is an invasion of constitutional right and will not be tolerated and where assessment against property of a bridge company shows a great disparity and discrimination as compared with the assessment of all other property, which could not reasonably have arisen from an error of judgment, courts will relieve against violation of constitutional rule of uniformity. *People vs. K. & H. Bridge Co.*, 287—246; *Raymond vs. Trac. Co.*, 207 U. S. 20.

Taxes must be uniform in proportion to the value of property, and where assessors have disregarded the injunction of the law, and made an assessment far below its real cash value their misconduct must also follow the principle of uniformity and their assessment of all property must be at the same proportional value. *People's Gas, Light & Coke Co. vs. Stuckart*, 286—164.

The legislature has power to provide means to maintain non-high-school districts subject to requirement of constitution regarding uniformity of taxation. *People vs. Chicago & N. W. R. Co.*, 286—384, 391.

The legislature has not the power to exempt from the rule of equality established by section 1 the property of any corporation, no matter for what purpose organized, except as authorized by section 3 of same article. *People vs. National Box Co.*, 248—141, 146.

The principle of uniformity is not violated by the levying of taxes for similar purposes by overlapping municipalities. *Board of Highway Commissioners vs. City of Bloomington*, 253—164, 168.

The fact machinery of pumping plant of drainage district is taxed while pumping plants of other municipalities are exempt under statute does not violate Sec. 1. *Nutwood Drain. & Levee Dist. vs. Board of Review*, 255—447, 449.

Provisions of section 1 of Inheritance Tax Act-excluding step-children from exemption is not an unlawful discrimination in violation of Sec. 1. *People vs. Tatge*, 267—634, 638.

The State tax against property of Illinois Central must be assessed on the same proportion of full cash value as other owners are assessed, under the general revenue law. *People vs. Ry. Co.*, 273—220.

Section 5 of Act of 1915 (L. 1915, p. 631), providing for payment of high school tuition out of State School fund violates principle of uniformity and equality in taxation required by section 1. *Board of Education vs. Haworth*, 274—538, 543.

Sections 94 and 96 of Non-High School Law of 1917 does not violate the rule of uniformity and equality in taxation. *People vs. Chicago & N. W. R. Co.*, 286—384, 392.

The exception in Clause 4, Sec. 1 of Revenue Act is unconstitutional as being an exemption not authorized by Sec. 3, Art. 9 of the Constitution. *Coal Co. vs. Miller*, 236—149; *People vs. National Box Co.*, 248—141.

Act creating State board of equalization is constitutional, and was held so under similar provision in Constitution of 1848. Its necessity arose from the uniformity provision of this Article. *P. vs. Salomon*, 46—333; *Adsit vs. Lieb*, 76—198.

The requirement of uniformity is not violated by an Act providing that the property of a corporation shall be taxed to the corporation and that shares shall not be taxed. *Loan and Homestead Ass'n vs. Keith*, 153—609 (1894). *Ex parte People's Loan and Homestead Ass'n*, 153—655 (1894).

The allowance of certain credits and deductions in assessment of personalty does not violate uniformity so long as it operates alike upon all persons and property like situated. *Edwards vs. P.*, 99—340.

The principle of uniformity and equality was not violated under Constitution of 1848 by an act requiring assessment of bank shares on July 1, instead of April 1, though other property was to be assessed on the latter date. *MaeVeagh vs. Chicago*, 49—318.

A requirement that taxes due from non-residents be paid at different time from those due from residents is constitutional. *Rhinclart vs. Schuyler*, 7—(2 Gil.), 473.

An incorrect valuation, if not fraudulently done, will not avoid tax on the ground of lack of uniformity. *Spencer vs. P.*, 68—510.

Under a similar provision in the Constitution of 1818, a statute which classified all lands in the State into three classes for purpose of taxation was constitutional. *Rhinehart vs. Schuyler*, 7—(2 Gil.), 473.

Clause 4, Sec. 3 of Revenue Act is constitutional because it makes a proper classification of corporations and so is uniform. The legislature may provide one method for determining the value of the capital stock, including the franchise, of a railroad company, another method for a mining corporation, and still another for manufacturing corporations and may empower the board of equalization to fix a mode of ascertaining the value of "capital stock." *Sterling Gas Co. vs. Higby*, 134—587; *Coal R. Co. vs. Finlen*, 124—666.

That part of Sec. 343 *infra*, which attempts to limit the power of every municipality in counties of 125,000 inhabitants or over, to incur indebtedness in excess of 2½% of the assessed valuation, and to limit the rate of taxation in every municipality or taxing district in such counties to 5% is unconstitutional. *P. vs. Knopf*, 183—410.

Assessing property of railway company higher than other property in county, or assessing it at one value in one county and at a different value in another county, although at less than its real value, violates the constitutional provision of uniformity. *Supervisors Bureau County vs. Chicago, etc., R. Co.*, 44—229; *Chicago, etc., R. C. vs. Boone County*, 44—240; *People's Gas Light Co. vs. Stuckart*, 286—164.

Uniformity is violated by taxing a loan made by an ordinary corporation to its stockholders and exempting a loan made by a building and loan association to its members. *Loan and Homestead Ass'n vs. Keith*, 153—609 (1894). *Ex parte People's Loan and Homestead Ass'n.*, 153—655 (1894).

An Act exempting the property of corporations violates the requirement of uniformity. Semble, that the exemption of any property from taxation is invalid for the same reason. *Loan & Homestead Ass'n vs. Keith*, 153—609 (1894); *Ex parte People's Loan & Homestead Ass'n*, 153—655 (1894).

The rule of uniformity was violated by a tax to pay bonds issued by a county to secure the location of a State reform school, as such school was of no greater benefit to the county where located than to any other. *Livingston County vs. Weider*, 64—427.

Uniformity is violated by assessing bank stock at par where other property is assessed at 1/3. *Darling vs. Gunn*, 50—424.

Under the Constitution of 1848 a provision of a city charter exempting inhabitants from road tax on and for roads beyond limits of city was unconstitutional. *O'Kane vs. Treat*, 25—557.

A similar provision of the Constitution of 1848 was violated by a charter authorizing city council to levy tax on real estate, but not on improvements on real estate or on personal property. *Primm vs. Belleville*, 59—142.

Under Constitution of 1848, the imposition of a penalty of 5% if tax not paid by a certain day, on taxpayers for delay in payment of taxes, other than costs of suit against delinquent taxpayers and penalties on sale of delinquent property, violates the requirement of uniformity. *Seammon vs. Chicago*, 44—269.

A poll tax on shares violated the rule of uniformity, as they were property and not all of the same value. *Nance vs. Howard*, 1 Breese Beecher, 242.

Under the uniformity provision of this section each tract must be assessed separately, or assessment invalid. Accordingly we have Sees. 4 and 76 of the Revenue Act which provide for such assessment. Constitution of 1870, Art. 9, Sec. 1, cited. *Howe vs. P.*, 86—288.

Proviso to Clause 4, Sec. 3, does not violate Sec. 1, Art. 9 of Constitution. *O. G. L. & C. Co. vs. Downey*, 127—201; *Coal R. C. Co. vs. Finlen*, 124—666; *Hub vs. Hanberg*, 211—43; *Gas Co. vs. Higby*, 134—557.

Taxation of land in possession of purchaser under bond for deed, and of purchase-money notes therefor in vendor's possession, is not double taxation, and so does not contravene the constitutional requirement of uniformity. *P. vs. Rhodes*, 15—304.

3. Property:

“Property” embraces a master's certificate of sale so that the general Revenue Act in permitting it to be taxed as such is constitutional. *Wedgbury vs. Cassell*, 164—624.

Franchises are property, and must be taxed under the Constitution. *Ottawa Glass Co. vs. McCaleb*, 81—556.

Credits, choses in action, and the property given in consideration therefor are taxable. *P. vs. Worthington*, 21—171.

Leasehold interests in lands owned by the State are taxable. *La Salle County Manuf. Co. vs. Ottawa*, 16—418.

“Personal estate” includes credits and money loaned, and an Act providing for taxing personalty, and not including credits and moneys loaned, would be unconstitutional, as making an unauthorized exemption. (Constitution of 1848). *Trustees vs. McConnell*, 12—138.

4. Value to be ascertained by whom:

The Act of March 10, 1866, empowering the board of supervisors to appoint assessors was valid. *Du Page County vs. Jenks*, 65—277.

Power to fix valuation cannot be exercised by legislative, executive or judicial departments of government, but the same rests solely in the persons selected as the legislature directs. *Republic Life Ins. Co. vs. Pollak*, 75—292; *Burton Stock Co. vs. Traeger*, 187—11.

Board of equalization may be invested with power to make original assessments. *Adsit vs. Lieb*, 76—198; *Porter vs. Rockford, Etc., R. Co.*, 76—561.

Every person and corporation is entitled to protection of this provision which precludes discrimination in favor of or against any class of property, person or corporation. *First Nat'l Bank vs. Holmes*, 246—362, 366.

5. Privileges:

Amended Sec. 1, Art. 5, Chap. 24, Rev. Stats. and the wheel tax ordinance passed thereunder, are constitutional and are not invalid as exacting a license fee from vehicles using the streets, because such tax levied upon a “privilege.” *Harder's Storage Co. vs. Chicago*, 235—58.

A city may tax livery stable keepers, when properly authorized by the legislature. *Howland vs. Chicago*, 108—496.

Under Constitution of 1818, providing Art. 8, Sec. 20, that taxation should be by valuation, a poll tax was not a property tax, and hence not unconstitutional. *Sawyer vs. Alton*, 4—(3 Scam.), 127.

6. Uniformity:

This provision is not violated by a statute (L. 1883, p. 92) which imposes license fee of \$150 on vendors of malt liquors and license of \$500 on vendors of other intoxicating liquors, as the division of liquor dealers into two classes is reasonable. *Timm vs. Harrison*, 109—593.

The legislature may impose the same burdens on foreign insurance company doing business in Illinois that are imposed by such foreign States on Illinois companies doing business in those States without violating the Constitution as it thereby makes a separate class of those companies. *Home Ins. Co. vs. Swigert*, 104—653; *Ins. Co. vs. Durfee*, 164—193.

7. Unclassified.

Where it was pleaded that the school district was required to pay all money derived from tax on railroad into State Treasury to pay bonds issued by the town in which the district was located. It did not appear that the district was co-extensive with the town. It was unconstitutional to require a school district to pay all money derived from the tax on a railroad company into the State treasury to be applied on payment of bonds issued to that railroad company by the whole town as this might operate to impose a greater burden on this district than on other districts in the town. *Allhands vs. People*, 82—234.

Section 1 of Constitution is only limitation upon the power of legislature to tax occupations. *Metropolis Theater Co. vs. Chicago*, 246—20.

No time is fixed within which a State tax levy may be made. *Morrison vs. Moir Hotel Co.*, 204 A. 433, 436.

Other taxes.] Section 2. The specification of the objects and subjects of taxation shall not deprive the General Assembly of the power to require other subjects or objects to be taxed in such manner as may be consistent with the principles of taxation fixed in this Constitution.

Act of 1879 which provided that foreign insurance companies shall pay a tax of 2% on gross receipts is valid by Art. 9, Sec. 2, as a tax upon "other subjects or objects" than those named in Sec. 1, Art. 9. *Raymond vs. Ins. Co.*, 196—329. See also *Hughes vs. Cairo*, 92—339; *Ducat vs. Chicago*, 48—172; *P. vs. Thurber*, 13—554; *Walker vs. Springfield*, 94—364; *Kunz vs. National Fire Ins. Co.*, 169—577.

A city cannot in the absence of authorization prohibit foreign insurance companies from doing business without license, as such ordinance is a revenue measure and not an exercise of police power. *City of Chicago vs. Phoenix Ins. Co.*, 126—276.

Amended Sec. 1, Art. 5, Chap. 24 Rev. Stats. and the wheel tax ordinance passed thereunder is valid because

If the right to use a public street is not a privilege within the meaning of Sec. 1, Art. 9, of the Constitution, then such right of taxation falls within the designation "other subjects or objects to be taxed" mentioned in Sec. 2 of Constitution. *Harder's Storage Co. vs. Chicago*, 235—58.

Occupation of horseshoers is taxable by legislature for purposes of revenue, but (semble) to justify it purely as a license there must be need for regulation. *Bessette vs. P.*, 193—341; *Price vs. P.*, 193—117.

The General Assembly may tax other subjects and objects than those specified in section 1 if the taxation is in harmony with the principles of the constitution. *Condon vs. Village of Forest Park*, 278—218, 226.

Exemption.] Section 3. The property of the State, counties, and other municipal corporations, both real and personal, and such other property as may be used exclusively for agricultural and horticultural societies, for school, religious, cemetery and charitable purposes, may be exempted from taxation; but such exemption shall be only by general law. In the assessment of real estate incumbered by public easement, any depreciation occasioned by such easement may be deducted in the valuation of such property.

The legislature may exempt from taxation only property specified in this section. *Loan & Homestead Ass'n vs. Keith*, 153—609; *People vs. National Box Co.*, 248—141, 146; *Cong. Pub. Society vs. Board of Review*, 290—108.

Section 2 of Revenue law was adopted by the legislature pursuant to the authority conferred by this section. *Board of Directors vs. Board of Review*, 248—590, 593.

School is a place where systematic instruction in useful branches is given by methods common to schools in the common acceptance of that word, as distinguished from what are called schools where instruction is given in dancing, riding, deportment and like things. *People vs. Deutsche Gemeinde*, 249—132.

Religious purpose is a use of property by a religious society or body of persons as a stated place of public worship, Sunday schools and religious instruction. *People (ex rel.) vs. Deutsche Gemeinde*, 249—132.

Enumeration in section 3 of certain specified property exempted from taxation is a limitation upon the power of the legislature to exempt any other property. *People vs. Deutsche Gemeinde*, 249—132, 135.

The legislature may not exempt from taxation notes taken by a building and loan association from its members. *Loan & Homestead Ass'n vs. Keith*, 153—609.

Section 3, Art. 9, of the Constitution does not itself exempt property from taxation, but only authorizes the general assembly to do so. Thus while the Constitution authorizes the assembly to exempt property used for religious purposes, the assembly has not gone so far, but instead exempts church property used exclusively for public worship. In *re Walker*, 200—566.

A bridge owned by a city, outside the city limits, and for use of which the city charges toll, is not exempt under this section in the absence of exemption by Act of the legislature. In the *Matter of Swigert*, 123—267.

An institution of learning which has ceased to use the property for such purposes is not exempt under the Constitution in absence of legislation making such exemption by general law. *Edgar Collegiate Inst. vs. P.*, 142—363 (1892).

Separate lot used for office and dwelling of custodian of burial grounds adjoining is not exempt by above section of Constitution in absence of legislative act. *Bloomington Cemetery Ass'n vs. P.*, 170—378.

Legislature may exempt park from taxation. *P. vs. Salomon*, 51—37.

An Act exempting money "collected and on hand within this State of every kind and nature of fraternal beneficiary societies and the subordinate lodges thereof" is unconstitutional, as such organizations are not public charities, but are insurance companies. *Supreme Lodge vs. Board of Review*, 223—54.

Municipal warrants issued for loan to city are subject to taxation because not property of municipality. *Easton vs. Board of Review*, 183—256.

The exception in Sec. 1, Clause 4 of Revenue Act in attempting to exempt certain companies not enumerated above, is void. *Coal Co. vs. Miller*, 236—149.

Sale of land — Return to general officer — Judgment.] Section 4. The General Assembly shall provide, in all cases where it may be necessary to sell real estate for the non-payment of taxes or special assessments for State, county, municipal or other purposes, that a return of such unpaid taxes or assessments shall be made to some general officer of the county having authority to receive State and county taxes; and there shall be no sale of said property for any of said taxes or assessments but by said officer, upon the order or judgment of some court of record.

Section 216 of Revenue Law was enacted to carry out this section of the Constitution. *Clark vs. Zaleski*, 253—63, 74.

Section 253 of Revenue Law giving authority to foreclose tax lien in equity is in conformity with this section. *People vs. Cant*, 260—497, 499.

Section 227 of Revenue act does not violate section 4 prohibiting sale for taxes without an order or judgment of a court of record. *Zicarelli vs. Stuckart*, 277—26, 33.

Sale for taxes by city collector void. *Gage vs. Hervey*, 111—305.

Sec. 4, Article 9 of Constitution of 1870 repeals so much of municipal special charters as authorized city collector to apply for judgment for taxes. *Smith vs. P.*, 75—36; *Hills vs. Chicago*, 60—86; *Parmelee vs. Chicago*, 60—267; *Weekler vs. Chicago*, 61—142; *Otis vs. Chicago*, 62—299.

A sale made by city collector, not a county officer, but under a judgment entered before this provision took effect, is valid. *Garrick vs. Chamberlain*, 97—620.

Without this section the power of the legislature in respect to providing for the sale of land for taxes and special assessments, and the mode to be pursued in making such sales would have been plenary. *Chambers vs. P.*, 113—509.

A sheriff in counties not under township organization may apply for sale for delinquent taxes as he is also county collector and district collector. *Ryan vs. P.*, 117—486.

Redemption — Notice.] Section 5. The right of redemption

from all sales of real estate for the non-payment of taxes or special assessments of any character whatever, shall exist in favor of owners and persons interested in such real estate, for a period of not less than two years from such sales thereof. And the General Assembly shall provide by law for reasonable notice to be given to owners or parties interested, by publication or otherwise, of the fact of the sale of the property for such taxes or assessments, and when the time of redemption shall expire: Provided, that occupants shall in all cases be served with personal notice before the time of redemption expires.

Section 253 of Revenue law giving authority to foreclose tax lien in equity is in conformity with this section. *People vs. Cant*, 260—497, 499.

Section 227 of Revenue Law does not deprive owner of property of constitutional right of redemption. *Ziccarelli vs. Stuckart*, 277—26, 32.

Where the notice to owner states date of expiration of period for redemption, same as date of sale, a tax deed given thereunder confers no title. *Wilson vs. McKenna*, 52—43.

Under provision in Constitution of 1845 the party who claims under the tax deed has the burden of proving that prescribed notice was given. *Williams vs. Underhill*, 58—137.

By this provision is meant that reasonable notice shall be given to the owner, and to any other person who had a specific or other interest in the property, as shall be deemed proper in legislative discretion. *Smyth vs. Neff*, 123—311.

The facts of service of the notice must be particularly set out in the affidavit. *Price vs. England*, 109—394.

The legislature may determine the kind and form of the notice as the Constitution is silent as to kind of notice. Section 216. *Frew vs. Taylor*, 106—159.

The Constitution contemplates the giving of notice before the expiration of the period of redemption and therefore the three months' provision of Sec. 216 of Revenue Act is not unconstitutional as not providing for those who get possession within the three months, they being in position of purchasers pendente lite. *Taylor vs. Wright*, 121—455.

Notice which states that time of redemption will expire 10/26/76 when it does not expire until Nov. 6, 1876, is fatally defective. *Gage vs. Bailey*, 100—530. See under Sec. 216 General Revenue Act.

This does not apply to sale on execution under personal judgment for delinquent taxes. *Douthett vs. Kettle*, 104—356.

Sec. 216 of General Revenue Act, was adopted in obedience to this section of the Constitution. *Gage vs. Webb*, 141—533; *Clark vs. Zaleski*, 253—63, 74,

State taxes — Not to be released.] Section 6. The General Assembly shall have no power to release or discharge any county, city, township, town or district whatever, or the inhabitants thereof, or the property therein, from their or its proportionate share of

taxes to be levied for State purposes, nor shall commutation for such taxes be authorized in any form whatsoever.

So much of the Act of 1869 which required the State revenue to be collected on valuations of the taxable property in the State remaining after deducting, in counties, townships, cities and towns which have outstanding indebtedness incurred in aid of the construction of railroads, the increased valuation of the taxable property over that of the year 1868, cannot be enforced. *Ramsey vs. Hoeger*, 76—432.

An Act which exempts from taxation all parcels of land in city exceeding 10 acres until subdivided into lots of 10 acres or less, is void. *Hayward vs. P.*, 145—55 (1893).

It is unconstitutional to appropriate State taxes and revenues to a local improvement (e. g., Kaskaskia River Navigation Company's improvements). *P. vs. Lippincott*, 65—548.

An Act is void which purports to exempt a city from State taxes for twenty years, even though it requires the city to levy an equal tax for that period for improvement. *P. vs. Barger*, 65—452.

The provision in the Act which imposed a gross premium tax on insurance companies (*Hurds*, 1899, p. 1042) that the tax shall be in full for all taxes, State and local, except on real estate, etc., was not a commutation, but a mode of taxation different than by the general Revenue Law, i. e., under Sec. 1, Art. 9, Clause 2. *Raymond vs. Fire Insurance Co.*, 196—329.

Exemption of citizens of a municipality from road labor beyond corporate limits is not unconstitutional since such assessment is not a tax for State purposes. *Town of Pleasant vs. Kost*, 29—490.

The legislature may by city charter provide that city shall keep roads and bridges within its limits in repair and call in male citizens to perform road labor or pay commutation to city, and that citizens so working or paying shall be exempt from taxation by county under general road law as this operates to make the city one road district of the county and does not commute a tax, road labor not being a state tax. *Cooper vs. Ash*, 76—11.

Under Constitution of 1848, Legislature had the power to give irrevocable exemption from taxation. *Ill. Cent. R. Co. vs. Irvin*, 72—452.

Under Constitution of 1848 a charter exempting a corporation's property from taxation is binding on State. *P. vs. Soldiers' Home*, 95—561; overruling *Northwestern University vs. P.*, 86—141, and *Northwestern University vs. P.*, 80—333.

Under Constitution of 1848 the legislature may commute tax for an equivalent burden and a charter provision exempting city property from county taxation in consideration of its supporting its own paupers, was valid. *Hunsaker vs. Wright*, 30—146.

Under Constitution of 1848, Chap. 120, Par. 305, commuting tax on Illinois Central Railway Company for payment of fixed per centum of its gross income, is constitutional. *Ill. Cent. R. Co. vs. McLean County*, 17—291.

Under Constitution of 1818, Legislature may by contract grant to a corporation irrevocable exemption from taxation. *State Bank vs. P.*, 5—(4 *Scam.*), 303.

The State taxes to be levied against property of Illinois Central, under section 22 of its charter are the regular state tax levied on other property. *People vs. Illinois Central R. Co.*, 273—220.

Legislature has power to provide means to maintain non-high-school districts subject to requirements of constitution regarding distribution of taxation. *People vs. Chicago & N. R. Co.*, 286—384, 391.

The act of 1915 (L. 1915, p. 631), providing for payment of high school tuition from State fund, effect a release or commutation of taxes and violates sec. 6 art. 9 const. *Board of Education vs. Haworth*, 274—538, 545.

———**To be paid to State treasury.**] Section 7. All taxes levied for State purposes shall be paid into the State treasury.

Abrogated Act of April 15, 1869, authorizing certain taxes to be paid to Kaskaskia River Navigation Co. *P. vs. Lippincott*, 65—548.

County taxes — Limitation.] Section 8. County authorities shall never assess taxes, the aggregate of which shall exceed seventy-five cents per \$100 valuation, except for the payment of indebtedness existing at the adoption of this Constitution, unless authorized by a vote of the people of the county.

This section does not necessarily limit the power to contract a debt, but is merely a limitation upon the power to levy taxes. *County of Coles vs. Goehring*, 209—142.

This section does not give any right to tax, but imposes a limit beyond which county authorities cannot tax. *Booth vs. Opel*, 244—317; *People (ex. rel.) vs. Wabash, R. Co.*, 286—15, 17.

Applies to taxes levied for “county purposes” only. Hence levy by county not under township organization of road tax under Road Act of April 18, 1873, in addition to the seventy-five per \$100 hereby allowed, violates this section. Semble, where county is under township organization, then the town may levy a tax for town purposes in addition to county tax limit. *Wright vs. Wabash, etc., R. R. Co.*, 120—541.

Taxes provided for in Sec. 122 of Revenue Act are town taxes, not county taxes, within the meaning of this section. *Wabash, etc., R. Co. vs. McCleave*, 108—368.

But a levy to the proper amount is good notwithstanding levy in excess of per cent. allowed by Constitution if separable. *Mix vs. P.*, 72—241.

A tax in excess of seventy-five cents on \$100 is valid where it is levied to pay bonds issued to pay debt of county incurred prior to adoption of Constitution of 1870. *Chiniquy vs. P.*, 78—570. Although a tax had been once levied therefor and misapplied. *County of Pope vs. Sloan*, 92—177.

Under this section and the enabling act, Chap. 34, Sec. 27 thereunder, the order for election may state substantially the amount required to be raised by the additional county tax, in which case after approximately that sum has been raised, the power to tax further under the resolution, is exhausted. Thus \$15,000 over \$100,000 mentioned is beyond the margin allowed. *Ry. Co. vs. Knapp*, 198—318.

A vote in favor of a tuberculosis sanitarium tax under act of 1915 (L. 1915, p. 346) does not authorize a tax in excess of constitutional limitation. *People vs. Wabash R. Co.*, 286—15.

Municipal taxes — Special assessments.] Section 9. The General Assembly may vest the corporate authorities¹ of cities, towns and villages with power to make local improvements^{1a} by special assessment, or by special taxation of contiguous property,^{1b} or otherwise.^{1c} For all other corporate purposes,² all municipal corporations³ may be vested⁴ with authority to assess and collect taxes; but such taxes shall be uniform⁵ in respect to persons and property, within the jurisdiction⁶ of the body imposing the same.

1. Corporate Authorities:

- Authorities of municipality who are directly elected by people to be taxed, or who are appointed in some mode to which they have given their assent are corporate authorities. Thus if power were given to board of local improvements to tax it would not be given to the proper "corporate authority." The board of local improvements is not itself given power to tax, but the city is, after recommendation of the board, so that the board is a mere limitation on the power of the city and hence assessment by the city recommended by the board is valid. *Givins vs. City of Chicago*, 188—350.

Park Commissioners have power to tax so long as board elected by people to be taxed. *P. vs. Salomon*, 51—37.

The words "or otherwise" permit a city to combine general taxation with special assessment or special taxation, but not special assessment with special taxation. While a city may, by original ordinance provide that an improvement is to be paid for in part out of the general fund and in part by special taxation, after the ordinance is passed and the assessment levied the city may not change the mode of payment. *Chicago vs. Brede*, 218—528.

Thus a city was not justified in buying up special assessment vouchers with funds out of the general taxes. *Kuehner vs. City of Freeport*, 143—92 (1892).

The legislature may create Park Boards and vest them with powers of taxation for improving boulevards and parks, as it thereby creates a new class of corporations, and so comes within this section of Constitution. *Park Com'rs vs. Telegraph Co.*, 103—35.

A toll-road charter granted in 1849 must be held to have been accepted by the donee and by its grantee upon the implied condition that the right to use the highway for a road should give way as to such part thereof as should become subjected by the growth of the city and its increase in population to the control and government of an incorporated city as otherwise the legislature would practically have vested a private person with power to tax the people. *Snell vs. City of Chicago*, 133—413.

The act of 1895 (L. 1895, p. 271,) for the organization of park districts and transfer of submerged lands is not unconstitutional. *Van Nada vs. Goedde*, 263—105, 109.

The section gives cities, villages and towns the right to make local improvements by special assessments, special taxation or general taxation. *Merchants Loan & Trust Co. v. Chicago*, 264—76, 82.

Amendment of 1913 to sections 57 and 58 of Local Improvement Act is not invalid as authorizing the making of local improvements by board of local improvements instead of "corporate authorities." *City of Lincoln vs. Harts*, 266—405, 410.

Does not prevent enforcement of judgment, legal duty or obligation of municipality without consent of tax payers, even though tax must be levied. *Drainage Comrs. vs. Comrs. Rector Drain. Dist.*, 266—536.

The act of 1913 (L. 1913, p. 272,) with reference to apportionment of cost of construction between adjoining drainage districts is not in violation of this section. *Drainage Comrs. vs. Comrs. Rector Drain. Dist.*, 266—536, 539.

Corporate authorities are the authorities of the municipality who are directly elected by the people to be taxed or appointed in some mode to which they have given their consent. *Drain. Comrs. vs. Comrs. Rector Drain. Dist.*, 266—536, 539; *People (ex rel.) vs. Block*, 276—286, 289.

1a. Local Improvements:

The stand-pipe, reservoir, pumping works, etc., of a system of waterworks are in no sense a local improvement, and their payment comes out of general taxes. *Hughes vs. Momence*, 164—16.

Local improvement as used in this section means such improvements as are paid for by special assessment or special taxation. *Loeffler vs. Chicago*, 246—43, 51.

Section 97a of Local Improvement Act (R. S. Ch. 24), authorizing a single improvement to be constructed jointly in two or more municipalities is void. *Loeffler vs. Chicago*, 246—43.

1b. Contiguous Property:

"Contiguous property" in above section refers to special taxation, and not to special assessments. Special assessments may be made upon property specially benefited whether contiguous or not. *Guild, Jr., vs. City of Chicago*, 82—472.

A street railway located upon a street of a municipality is "contiguous property" and liable to a special assessment for a local improvement upon such street. *Spring Creek Drain Dist. vs. R. Co.*, 249—260, 287.

1c. Or otherwise:

The words "or otherwise" were probably inserted to prevent any possible construction of the clause which would render the special modes enumerated exclusive, so as not to operate as a limitation upon municipal authorities to make local improvements in any other manner. *Kuehner vs. City of Freeport*, 143—92 (1892).

The word "or" is used in its ordinary disjunctive sense, meaning one or the other of two, but not both; the words "or otherwise," refer to still other modes than those thus specified and do not authorize the combination of the modes mentioned. *Kuehner vs. City of Freeport*, 143—92 (1892).

The provision giving the right to vest in cities, towns and villages the right to make local improvements by special assessment or special taxation is an exception to the dominant principle of the Constitution in respect of taxation, and ought not to be extended beyond the clear import of the language employed. *Kuehner vs. City of Freeport*, 143—92 (1892).

Railway contiguous to proposed street improvement may be specially taxed for the making of local improvements. *Kuchner vs. City of Freeport*, 143—92 (1892).

The constitutional principle of equality of taxation applies as well to special assessments as to the ordinary modes of taxation, and it must be imposed on all property similarly situated with respect to the proposed improvement. *Kuchner vs. City of Freeport*, 143—92 (1892).

A special tax levied annually to pay for repairs of boulevards is not for a local improvement within the meaning of this section and a special tax levied for that purpose is void. *Craue vs. West Chicago Park Commissioners*, 153—348 (1894).

Levee act (R. S. Ch. 42) in authorizing assessment against town for benefit to highway is valid and not in violation of this section. *Vandalia Levee & Dran. Dist. vs. Vandalia R. Co.*, 247—114, 122.

Under section 40 of Farm Drainage act (R. S. Ch. 42), special drainage district may assess special benefits to public highways and railroads. *Shabbona Spec. Drain Dist. vs. Town of Cornwall*, 281—551, 554.

2. Corporate purposes:

Under Constitution of 1848 the Legislature could authorize a town to levy a tax to refund money to individuals which they subscribed to pay bounties to volunteers. *Johnson vs. Campbell*, 49—316; *Stebbins vs. Leaman*, 47—352; *State vs. Sullivan*, 43—412; *Briscol vs. Allison*, 43—291; *Henderson vs. Lagow*, 42—360.

An Act authorizing a town to levy tax to pay bounties to volunteers, was valid under Constitution of 1848, being held a tax for "corporate purpose." *Taylor vs. Thompson*, 42—9.

Subscription of stock to Railroad a corporate purpose. *Gaddis vs. Richland County*, 92—119.

Subscription by city to aid construction of railroad in another State, which connected with a point on the Mississippi River opposite the city was for a corporate purpose under Constitution of 1848. *Quincy, etc., R. Co. vs. Morris*, 84—410.

Subscription in aid of a Railway is corporate purpose. *Chicago, etc., R. Co. vs. Smith*, 62—268.

Act which provides that all county and township taxes paid by a railway company should be paid into the State treasury as sinking fund to pay bonds issued to such railway company by various of the towns in such county imposes tax not for corporate purpose on towns in county which are not benefited by the railway. *Sleight vs. P.*, 74—47.

Under Constitution of 1848, the legislature may not permit a school district to subscribe for railroad stock and collect tax to pay same, as not being for corporate purpose. *P. vs. Trustees of Schools*, 78—136. *P. vs. Dupuyt*, 71—651; *Trustees vs. P.*, 63—299.

A county may build a new bridge in the city, necessitated by the work of drainage commissioners, and pay therefore out of the general taxes, as such is of general public benefit to the county, the county acting as an arm of the state. *Vittum vs. P.*, 183—156; *Heffner vs. Cass and Morgan*, 193—451; *People (ex rel.) vs. Burnstrom*, 274—62, 67.

- Act authorizing the collection of back tax, and directing that persons who had voluntarily paid such tax should be credited with their payments, is not bad as being a tax for other than corporate purposes, because the act provides that the city council merely determine the amount of back taxes already levied and certify it to the county clerk. *Fairfield vs. P.*, 94—244.
- Provision in city election law that salaries of commissioners shall be paid by the county is valid because it is for a county corporate purpose. *Wetherell vs. Devine*, 116—631.
- It is not unconstitutional to require that excess of fees be paid into town treasury, as such does not provide for taxes for other than corporate purposes. *Ryan vs. P.*, 117—486.
- Provision in Sec. 110 of Road and Bridge Act of 1879, that, upon happening of certain facts, supervisors shall with county funds aid town to pay for erection of bridge to extent of half cost, is not levying a tax for strictly local purposes but is within corporate purposes of county. *Board of Supervisors of Will Co. vs. P.*, 110—511.
- It was a corporate purpose to issue and sell bonds to pay the judgment indebtedness of the city. *Stone vs. Chicago*, 207—492.
- While under Sec. 2, Art. 9, of Constitution taxation whereby one county was made to pay a greater proportion of tax for the support of a State institution than others, was illegal; where it was imposed to pay off bonds voluntarily subscribed for an institution bearing such relation to the county that its introduction might be held a corporate purpose within this section, it is valid. *Burr vs. Carbondale*, 76—455.
- Tax by municipality to raise funds to provide a location for a State reform school is not for a corporate purpose, and bonds issued for such purpose are invalid. *Livingston County vs. Weider*, 64—427.
- Section 93 to 96 of School law as amended in 1917, so-called Non-high-school law, does not violate this section. *People vs. Ry. Co.*, 288—70, 72.
- The city Election act which apportions expenses of township election held thereunder does not violate this section, as it does not refer to townships. *Bolles vs. Prince*, 250—36, 38.
- Legislature had power to enact subd. 16, sec. 3, art. 4 of Township organization Act authorizing electors of town lying wholly within limits of incorporated city or village to transfer township funds from treasury of town to treasury of city or village to be used for constructing or repairing roads and bridges. *People (ex rel.) vs. Burnstrom*, 274—62, 67.
- Legislature may require municipality to levy tax to create park police pension fund without violating this section. *Board of Trustees vs. Comrs. of Lincoln Park*, 282—348, 354.
- Section 58 of Public Utilities Act which apportions part of cost of subway constructed at dangerous railroad grade crossing to municipality in which it is situated does not create debt for purely local purposes but is for protection of general public. *Chicago, M. & St. P. R. Co. vs. County of Lake*, 287—337, 342.

3. Municipal Corporations:

- Board of county commissioners are corporate authorities and so authorized to direct a levy of town tax. *Bebb vs. P.*, 172—376.

West Chicago Park Commissioners are corporate authorities. *West Chicago Park Com'rs vs. Sweet*, 167—334.

The election commissioners created by the city election law of 1885 are corporate authorities and necessary expenses incurred by them are for corporate purposes which they are empowered to incur. *Wetherell vs. Devine*, 116—631.

The power to tax cannot be delegated to any other than corporate authorities, but legislature may delegate power to tax to Park Commissioners because they are the corporate authorities of the park district. *Cornell vs. P.*, 107—372.

An Act which constitutes a drainage district with certain designated persons and their successors the body politic, is void in so far as it vests such body with the power to tax, such body not being "corporate authorities." *Hessler vs. Drainage Commissioners*, 53—105.

In the "Board of Directors for Levelling the Wabash River and its tributaries on Allison Prairie," where the people had no voice in its incorporation and the taxation was not to be levied by those elected by the owners of real estate in the district to be taxed, the power to tax was void. *Board, etc., Wabash River vs. Houston*, 71—318.

Where the Legislature created the drainage corporation and appointed the officers, they were not corporate authorities to whom the power of taxation could be given. *Gage vs. Graham*, 57—144.

Under somewhat similar provision in Constitution of 1848, an attempt to vest a private school with taxing power, is void. *P. vs. McAdams*, 82—356.

Town officers making appropriation to R. R. Co. upon vote of legal voters of town, were held corporate authorities for such purposes, under Constitution of 1848, Art. 9, Sec. 5. *Chicago, etc., R. Co. vs. Smith*, 62—268; *Decker vs. Hughes*, 68—33.

4. Vested with authority to assess and collect taxes:

Legislature may delegate power to tax which it has under Sec. 1 and 2 to municipal corporations:

Under its power to regulate streets the city could not tax vehicles but the legislature had power under Secs. 1 and 2 of Art. 9 to tax the "right" to use the streets, and under Sec. 9 might delegate that to the city. *Harders Storage Co. vs. Chicago*, 235—58.

Legislature may delegate power it has under Secs. 1 and 2 of Art. 9, of the Constitution, to tax special employments to municipal authorities. *City of E. St. Louis vs. Wehrung*, 46—392; *Wiggins vs. Chicago*, 63—372.

Occupation of Broker is taxable by municipality for purpose of revenue. *Banta vs. City of Chicago*, 172—218.

Legislature may delegate power to tax to municipalities. *Braun vs. City of Chicago*, 110—186.

This section relates only to special or uniform taxation in municipalities, and not licenses or license fees for revenue, imposed on privilege, such as city tax on insurance companies. *Walker vs. Springfield*, 94—364.

The legislature might delegate to municipalities the power to tax a railway company's franchise to extent of its existence within the city limits. *Huck vs. C. & A. R. Co.*, 86—352.

The curative act of June 14, 1917 (L. 1917, p. 744) is a valid law, does not violate this section and validated high school taxes levied before the act was passed. *People vs. Madison*, 280—96; *Same vs. Mathews*; 282—85; *Same vs. R. Co.*, 284—87; *Fisher vs. Fay*, 288—11.

5. Taxes shall be uniform:

A tax levied under a village ordinance which provided for an additional water tax against each lot or parcel of ground having a building on it, the fund to go to fire department, was invalid as an exercise of police power for the police power levies no tax, though it may impose a small fee but not for revenue, and this provision was for revenue and not regulation. As a tax it disregards the constitutional provision of uniformity. *Lemont vs. Jenks*, 197—363.

Legislature may invest municipalities with authority to tax for corporate purposes without limitation so long as the tax is uniform as to persons and property of the same class within corporate limits. *Braun vs. City of Chicago*, 110—186.

This section would be violated by permitting a bridge within municipal limits to escape taxation because situated upon ground covered by navigable stream. *St. Louis Bridge Co. vs. East St. Louis*, 121—238.

Where part of township in which the tax rates are highest is within limit of school district, tax must be scaled throughout the township, as otherwise town tax would not be uniform throughout township. *People vs. Chicago & Alton R. Co.*, 247—458, 461.

Uniformity of taxation is secured by the amended Revenue law of 1909 by regarding every taxing district as a separate unit, hence that law does not violate this section. *People vs. Chicago & W. Ind. R. Co.*, 256—388.

The proviso to section 55 of Roads and Bridges act which exempts residents of cities from poll-tax violates provision for uniformity and renders section void. *Town of Dixon vs. Ide*, 267—445.

6. Within the jurisdiction:

Under Constitution of 1848 a law authorizing county to levy tax on a strip of land through which railroad ran, to pay subscription by that strip of territory, is void. *Madison County vs. P.*, 58—456.

Where the city charter gave the city exclusive control of streets and alleys in its limits, a road tax levied by the highway commissioners of township in so far as it touched inhabitants of city, was invalid. *Butz vs. Kerr*, 123—659.

The jurisdiction of a city over its streets and highways is exclusive and the highway commissioners have no jurisdiction over any roads or bridges lying within the corporate limits of the city. Therefore, where the city and the town are co-extensive the city cannot levy a road tax in addition to its 2% limit. *People vs. R. R. Co.*, 172—71.

But unless it makes the city a special road district the legislature cannot exempt inhabitants of city from road tax imposed by town. *O'Kane vs. Treat*, 25—557.

The provision of Sec. 40½ of the Farm Drainage Act (Par. 115, Chap. 42, Stat. 1905) that the drainage commissioners build bridges on roads which its artificial channels intersect, the cost to be paid out of road and bridge tax, conflicts with this section as forcing a local improvement upon a town. *Morgan vs. Schusselle*, 228—106.

The third proviso to section 55 of Levee Act (R. S., Ch. 42) requiring town to restore bridge removed by commissioners of drainage district when digging ditch across public highway is invalid. *People vs. Block*, 276—286, 289.

The act of 1909 (R. S., Ch. 121) requiring each county to pay its proportionate share of cost of bridge on county line does not violate this section. *People (ex. rel.) vs. Williamson County*, 286—44, 48.

Municipal taxes — Limitation — Private property exempt.]

Section 10. The General Assembly shall not impose taxes upon municipal corporations, or the inhabitants or property thereof, for corporate purposes,¹ but shall require that all the taxable property within the limits of municipal corporations shall be taxed for the payment of debts contracted under authority of law,² such taxes to be uniform in respect to persons and property, within the jurisdiction of the body imposing the same.³ Private property shall not be liable to be taken or sold for the payment of the corporate debts of a municipal corporation.

1. Cases where the prohibition was violated:

An act which sought to compel the city to issue bonds for park against its will was void. *P. vs. Chicago*, 51—58; following *P. vs. Mayor of Chicago*, 51—17.

It is unlawful except where there is an insurrection, or the city fails to furnish sufficient security to life and property, to require the city to pay police officers appointed by the State, as this would be imposing a debt on the corporation without its consent. *Wider vs. East St. Louis*, 55—133.

An act providing for a tax only on the district through which a R. R. ran that strip having subscribed to the R. R., is void as amounting to a tax by the State for corporate purposes of that strip or district. *Madison County vs. P.*, 58—456.

Legislature could not without its consent create a debt against a municipality and subject it to taxes for payment thereof. *Marshall vs. Silliman*, 61—218; *R. Co. vs. Lake County*, 287—337, 342.

Under Constitution of 1848, Legislature could not validate an invalid vote to subscribe to R. R. Co. as that would compel a municipality to incur a debt for local purposes against its own wishes. *Cairo, etc., R. Co. vs. Sparta*, 77—505.

The third proviso to section 55 of Levee Act (R. S. Ch. 42) requiring town to restore bridge removed by commissioners of drainage district when digging ditch across public highway is invalid. *People vs. Block*, 276—286, 289.

Cases where it was not:

Section 9 of act requiring county to pay for care of dependent girls at industrial schools (R. S. Ch. 122) does not violate this section as such expenses is a means of discharging obligations resting on the State, and the State may impose such taxes in the performance of duties which relate to the general welfare of the State or which may be performed by a municipal corporation as an agency of the State. *Industrial School vs. Cook County*, 289—432.

- Secs. 93 to 96 of School Law as amended in 1917, so called "Non-high school law does not violate this section. *People vs. Ry. Co.*, 288—70, 72.
- Section does not prohibit the State from imposing a liability against municipality where the public safety and welfare requires it, and the municipality fails and neglects to act. *Chicago, M. & St. P. R. Co. vs. Lake County*, 287—337, 345.
- The act of 1909 (R. S. Ch. 121) requiring each county to pay its proportionate share of cost of bridge on county lines does not violate this section. *People vs. Williamson County*, 286—44, 48.
- The act of 1917 (L. 1917, p. 612) providing for park police pension fund does not impose tax upon municipality for corporate purpose without the consent of corporate authorities. *Board of Trustees vs. Commissioners of Lincoln Park*, 282—348, 354.
- Under section 40 of Farm Drainage Act special drainage district may assess special benefit to public highways and railroads. *Shabbona Spec. Drain. Dist. vs. Town of Cornwall*. 281—551, 554.
- The curative act of June 14, 1917 (L. 1917, p. 744) is a valid law, does not violate this section and validated high school tax levied before the act was passed. *People vs. Madison*, 280—96; *Same vs. Woodruff*, 280—476; *Same vs. Mathews*, 282—85; *Same vs. Ry. Co.*, 282—87; *Fisher vs. Fay*, 288—11.
- The Police Pension Fund Act of 1909 (L. 1909, p. 133) is not in violation of section. *People vs. Abbott*, 274—380, 384.
- The legislature has power to direct application of revenues of a municipal corporation and subd. 16, sec. 3, art. 4 of Township Organization act authorizing electors to transfer township funds from treasury of town to treasury of city or village does not violate this section. *People vs. Burnstrom*, 274—62.
- Does not prevent enforcement of a judgment, legal duty or obligation without consent of tax payers, even though tax must be levied. *Drainage Commissioners vs. Commissioners Rector Drainage District*, 266—536, 539.
- The act of 1913 (L. 1913, p. 272) with reference to apportionment of cost of construction between adjoining drainage districts is not in violation of this section. *Drainage Commissioners vs. Commissioners Rector Drainage District*, 266—536, 539.
- The act of 1913 (L. 1913, p. 584) providing for payment of tuition of pupils transferred outside of high school district is not in violation of provision limiting power of taxation to corporate purposes. *Cook vs. Board of Directors*, 266—164, 168.
- The City Election Act which apportions expenses of township election held thereunder does not violate this section, as it does not refer to township. *Bolles vs. Prince* 250—36, 38.
- The Levee Act (R. S. Ch. 42) in authorizing assessment against town for benefit of highway is not in violation of this section. *Vandalia Levee & Drainage District vs. Vandalia R. Co.*, 247—114, 122.
- Act of Legislature imposing liability upon municipality for failure to protect property from destruction by mobs is not imposing a tax on the municipal corporation. *City of Chicago vs. Manhattan Cement Co.*, 178—380.

Semble. That in case of rebellion by municipality Legislature might under Constitution of 1848 impose tax on municipality without its consent to pay expense of suppressing rebellion. *Lovington vs. Wider*, 53—302.

Constitution of 1870 does not forbid unequal apportionment between city and county, of taxes collected. *Sangamon County vs. Springfield*, 63—66.

Special city charter, providing a plan of division between county and city of revenues collected by county, held, in 1876, not unconstitutional. If a deficiency should occur, it is presumed that in supplying it, the city is made to bear its share. Board, etc., *Logan County vs. Lincoln*, 81—156.

2. Under authority of law:

Under Constitution of 1848, the Auditor might register county bonds and levy tax for their payment on county. *Dunnovan vs. Green*, 57—63; *Decker vs. Hughes*, 68—33.

3. Taxes to be uniform:

See cases under same phase, supra, in Sec. 9.

Municipal officers — Eligibility — Salary.] Section 11. No person who is in default, as collector or custodian of money or property belonging to a municipal corporation, shall be eligible to any office in or under such corporation. The fees, salary or compensation of no municipal officer who is elected or appointed for a definite term of office, shall be increased or diminished during such term.

The election commissioners for Chicago and town of Cicero are municipal officers within meaning of Sec. 11. *People vs. Cook County Commissioners*, 260—345.

The Police Pension Fund Act of 1909 (L. 1909, p. 133) is not in violation of this section. *People (ex rel.) vs. Abbott*, 274—380, 384.

A county superintendent of schools is a municipal officer within meaning of Sec. 11, Art. 9. *Jimison vs. Adams County*, 130—558.

Clerk of probate court Cook county is included in that part of this section, relative to increase of salary. *County of Cook vs. Sinnott* 136—314 (1891).

Limit of indebtedness — Municipal corporations.] Section 12. No county, city, township, school district, or other municipal corporation, shall be allowed to become indebted in any manner or for any purpose,¹ to an amount, including existing indebtedness, in the aggregate exceeding five per centum on the value of the taxable property therein,² to be ascertained by the last assessment for State and county taxes, previous to the incurring of such indebtedness.³ Any county, city, school district, or other municipal corporation incurring any indebtedness as aforesaid,^{3a} shall before, or at the time of doing so, provide for the collection of a direct annual tax sufficient to pay the interest on such debt as it falls due, and also to pay and discharge the principal thereof within twenty years from the time of contracting the same.⁴ This section shall

not be construed to prevent any county, city, township, school district, or other municipal corporation, from issuing their bonds in compliance with any vote of the people which may have been had prior to the adoption of this Constitution in pursuance of any law providing therefor.⁵

1. What is an indebtedness:

Warrants may be drawn on treasury against taxes that have been levied but not collected, where payment is confined to the fund arising from tax levied, and no claim against corporation is acquired. *City of Springfield vs. Edwards*, 84—626; *Law vs. People*, 87—385.

Warrants drawn upon a particular fund, and payable therefrom only as it shall be collected, do not create indebtedness, and are valid. *Fuller vs. Heath*, 89—296; *Booth vs. Opel* 244—317.

Warrants must run not against city, but against revenue levied and that alone, in order to be anticipation warrants and certificates of indebtedness for temporary loans to the city, which bear interest, are within prohibition notwithstanding they are intended to be paid out of revenue levied for the current year, where payment is not by their terms confined to such fund. *Law vs. P.*, 87—385; *Hodges vs. Crowley*, 186—310.

The remedy of holder of anticipation warrants would be against the officers, and not against city. *Law vs. P.*, 87—385.

Burden is on person asserting validity to sustain certificates of indebtedness of the city where the limit has been exceeded. *Law vs. P.*, 87—385.

Warrants payable from taxes already levied though not collected, but not restricted to collection from such fund and that alone is invalid as an indebtedness in excess of the limit, where limit has already been reached, and collector cannot receive them in payment of taxes. *Fuller vs. Chicago*, 89—282.

Judgments against the city should be considered in determining whether a city is indebted beyond the constitutional limit. "Public benefits" due from the city, should not, as they represent the amounts which the city had been assessed for public benefit. The "water fund debt" should. Anticipation tax warrants should not. The amount in the city treasurer's hands for sinking fund purposes, should not. Accrued interest on floating indebtedness should, but not the floating indebtedness, the money to pay which is in the city treasury. *Stone vs. Chicago*, 207—492.

This section limits the amount of indebtedness; not the amount or rate of taxes to be raised. Under it, a city may not issue bonds so as to raise its indebtedness above the constitutional limit notwithstanding such bonds are payable out of the revenue of the waterworks intended to be built with the proceeds of those bonds and a 1 cent special tax, though such a tax without the bonds would be all right to create a sinking fund for the same purpose. *East Moline vs. Pope*, 224—386.

"Water bonds" are indebtedness and come within the prohibition of the provision above where the city may, upon contingency be required to pay by general taxation. *City of Chicago vs. McDonald*, 176—418.

Contract of city to have its streets lighted for thirty years, payment for such lighting to be made monthly, does create an indebtedness but is not prohibited by above section, if amount city is liable for at one time, does not exceed constitutional limit, i. e., the contract will be sustained in so far as it was executed, only. *City of East St. Louis vs. Gas Co.*, 98—415.

A lease of waterworks for 13 years at \$1,000 a year, is creating an indebtedness of \$13,000, which indebtedness is valid up to the constitutional limit, but so much of a tax levy as was to be applied on the illegal part thereof, is void. *R. R. Co. vs. People*, 200—541.

While the city was not bound to pay the Mueller certificates, nevertheless it proposed to mortgage some of its property, to-wit, the right to use the streets, as security therefore, and this was enough to bring them within the meaning of indebtedness. *Lobdell vs. Chicago*, 227—218.

Thus certificates payable out of water funds create a debt within the meaning of this section where the funds are an existing established income belonging to the municipality, as where it is proposed to extend a waterworks system already existing. *Schnell vs. Rock Island*, 232—89.

A city may acquire a system of waterworks by pledging the income until it shall pay for the system, and no indebtedness is created. The same rule might apply to some definite extension or waterworks where the income of the extension could be separated and applied to payment, but an obligation to pay with the income of property already owned by a city does create a debt. So a contract for furnishing electric lights to the city to be paid for monthly creates a debt. *Schnell vs. Rock Island*, 232—89.

A contract by which a city purchases an electric light plant, pays therefore what it could up to the limit of indebtedness, and gives a mortgage on the plant for the balance but which stipulates that the city is not to assume or agree to pay the debt, nevertheless creates an indebtedness to the extent of the mortgage, as the city had thereby invested some funds in the plant which it was liable to lose by foreclosure. The proper order to be entered in such a case would be to enjoin the payment of the mortgage indebtedness except out of the net income from the plant after paying operating expenses and the necessary repairs as an indebtedness is not created by buying property to be paid for wholly out of the income of such property. *Evans vs. Holman*, 244—596.

It was a good defence to mandamus to compel the board of supervisors of the county to appropriate money to meet one-half the expenses of building two bridges, that the commissioners had no money in the treasury, and could not pay it, and that the 5% limit of indebtedness had been reached. *Board of Supervisors vs. People*, 222—10.

Award of damages upon laying out new road under condemnation proceedings does not create a debt, present or contingent, within meaning of this section. *Commissioners of Highways vs. Jackson*, 165—24.

Ordinance fixing water rates which a private company may charge, does not create indebtedness, but merely establishes, subject to review by the courts, that a greater sum than the rate fixed cannot be lawfully exacted for that commodity. *City of Danville vs. Danville Water Co.*, 180—244. (Aff. 180 U. S., 619.)

Bonds payable in the future by general taxation issued to pay city's share of cost of improvement are an indebtedness and it makes no difference the bonds are payable out of special fund. *People (ex rel.) vs. Chicago & Alton R. Co.*, 253—191, 194.

A municipal corporation, acting in good faith, may borrow money for one year and issue bonds therefor. *People vs. Bowman*, 253—234, 249.

A drainage assessment is not an indebtedness within the meaning of the constitution. *People (ex rel.) vs. Honeywell*, 258—319.

The issuance of public utility certificates under Municipal Ownership Act of 1913, to be secured by a mortgage on city light and water plant creates a debt against the city. *Leonard vs. City of Metropolis*, 278—287, 291.

2. Prohibition:

Prohibition against incurring indebtedness is not against rate of tax and does not limit rate of taxation by which improvements may be made or obligations of municipalities meet, but is against voluntarily incurring an indebtedness in any manner or for any purpose and it makes no difference under what guise the attempt is made or what form the proceeding takes. *People (ex rel.) vs. Chicago & Alton R. Co.*, 253—191.

Constitutional prohibition against incurring indebtedness is to protect property of citizens from being burdened beyond 5% of its value as ascertained by assessment for State and County taxes, with any future indebtedness. *People (ex rel.) vs. Chicago & Alton R. Co.*, 253—191.

Constitutional limitation upon indebtedness applies to each municipal corporation singly, and where one corporation embraces same territory as others, each may contract corporate indebtedness to the constitutional limit. *People vs. Honeywell*, 258—319.

The amendment of 1913, to Sec. 6 of act concerning city hospitals, does not violate constitutional limitation. *Holmgren vs. City of Moline*, 269—248, 251.

Prohibition against incurring debt applies to debts payable in future, or on contingency, and to those for current expenses as well, and a levy of a tax to pay such, will be enjoined. *City of Springfield vs. Edwards*, 84—626; *Law vs. People*, 87—385.

Where the debts of a city exceeded this limit at adoption of the Constitution they were prohibited from increasing them. *Law vs. P.*, 87—385.

The levy of a tax to pay additional indebtedness incurred before levy made, will be enjoined where the debt of the city exceeds the limit. *Howell vs. Peoria*, 90—104.

Debt contracted by city for water supply, in excess of 5% limit cannot be collected. *Prince vs. Quincy*, 105—138; *Prince vs. Quincy*, 105—215.

Does not prohibit the annexation to each other in the manner provided by the act therefor approved and in force April 25, 1889. *True vs. Davis*, 133—522.

Contract for indebtedness to be paid in the future, and extending credit to the municipality beyond the constitutional limit, is void and a municipality is not liable in tort for refusal to pay an alleged indebtedness contracted in violation of constitutional provision. *Prince vs. Quincy*, 128—443.

Even though a municipal corporation is indebted to full limit allowed by the Constitution, it may levy taxes from year to year to complete an unfinished building notwithstanding its power to borrow money is exhausted. *People vs. R. R. Co.*, 224—448.

Semble, liability of city for tort is not affected by fact that its debt exceeds constitutional limit. *City of Bloomington vs. Perdue*, 99—329.

The act providing manner in which municipal corporations might thereafter issue anticipation warrants against taxes already levied is not in violation of Sec. 12, Art. 9. *Harrold vs. City of East St. Louis*, 197A, 121, 128.

3. Ascertainment of indebtedness:

The last assessment for State and county taxes previous to the incurring of an indebtedness determines the value of taxable property. *Culbertson, et al. vs. City of Fulton*. 127—30.

Five per cent of the taxable value as ascertained by the assessment for State and county taxes by the local assessor fixes the 5 per cent limit in this section. *People vs. Hamill*. 134—666 (1888).

“Value of taxable property,” in this section, is not the actual but the assessed value. *City of Chicago vs. Fishburn*, 189—367, 377.

3a. Indebtedness:

Semble. It is lawful for a municipality to contract a debt without providing for a direct annual tax, unless payment of such indebtedness is deferred to a fixed future period and which bears interest. This section would seem to contemplate a bonded or analogous indebtedness and a contract providing that work was to be paid for during the construction, monthly on the basis of 85 per cent of the value of labor performed and material in place, in interest bearing county orders, etc., would seem not within contemplation of the constitution. *Coles vs. Goehring*, 209—142.

4. Direct annual tax:

The section requires that the direct annual tax shall be sufficient to pay the interest and principal. A provision which directs that the tax be used for other purposes as well or which directs that a sufficient sum shall be appropriated to that end, from any annual park tax “not heretofore specifically appropriated by law,” is not in compliance with the Constitution because it does not insure the fund intended to be secured; this, however, does not render the Act unconstitutional, as this provision of the constitution is self-executing. The provision is to be made by the municipal corporation which levies the tax, and not by the legislature. The legislature need only give authority to incur the debt. *Pettibone vs. W. Chicago Park Commissioners*, 215—304.

It is the duty of a city where it has incurred debt since the adoption of the Constitution of 1870, no matter what are the limitations of its charter, to provide for the collection of an annual tax sufficient to meet the interest thereon, and to liquidate the debt within twenty years. On failure to do so, and if it allows the debt to mature, the courts will compel it to levy a tax sufficient to pay the same, with the arrears of interest, at once, since the constitutional provision is self-executing. *City of East St. Louis vs. P.*, 124—655; see also, *Law vs. P.*, 87—385.

The constitutional provision could not operate as a repeal of a clause in a city charter prohibiting the city from contracting an indebtedness in excess of an amount less than 5 per cent. *City of East St. Louis vs. P.*, 124—655.

By annual tax, is meant only, that character of indebtedness which bears interest and matures in futuro. *Town of Kankakee vs. McGrew*, 178—74.

If bonds are issued under Sec. 20 of Roads and Bridges Act, Sec. 12 secures to the bondholder the right to compel the levy of a tax in accordance therewith. *People vs. Chicago B. & Q. R. Co.*, 248—81, 84.

The sanitary district is within provision of constitution requiring provision for tax to pay interest on debt. *People vs. Day*, 277—543, 559.

Section 12, Art. 9, requiring any municipality issuing bonds to provide for a direct annual tax to pay interest as it falls due and to pay principal in twenty years, is self-executing, so a municipality which has complied with such provision may levy and collect a tax, although it is not included in annual levy ordinance or appropriation bill required by the statute. *People vs. Day*, 277—543, 554; *People (ex rel.) vs. Wabash R. Co.*, 281—382; *People (ex rel.) vs. N. J. Sandberg Co.*, 282—245, 252.

5. Prior to this constitution:

In determining whether a city is indebted beyond the constitutional limit, bonds to cover indebtedness incurred before the time the Constitution was adopted, should not be taken into consideration. *Stone vs. Chicago*, 207—492.

Bonds in excess of the limit of indebtedness might legally issue after new Constitution in force if voted for, before. *Maxey vs. Williamson County*, 72—207; *Board of Education vs. Bolton*, 104—220.

Revenue—Issue of Exposition bonds by city of Chicago.]

Section 13. The corporate authorities of the city of Chicago are hereby authorized to issue interest-bearing bonds of said city to an amount not exceeding five million dollars, at a rate of interest not to exceed five percentum per annum, the principal payable within thirty years from the date of their issue, and the proceeds thereof shall be paid to the treasurer of the World's Columbian Exposition, and used and disbursed by him under the direction and control of the directors in aid of the World's Columbian Exposition, to be held in the city of Chicago in pursuance of an Act of Congress of the United States: Provided, that if, at the election for the adoption of this amendment to the Constitution, a majority of the votes cast within the limits of the city of Chicago shall be against its adoption, then no bonds shall be issued under this amendment. And said corporate authorities shall be repaid as large a proportionate amount of the aid given by them as is repaid to the stockholders on the sums subscribed and paid by them, and the money so received shall be used in the redemption of the bonds issued, as aforesaid: Provided, that said authorities may take, in whole or in part of the sum coming to them, any permanent improvements placed on land held or controlled by them: And provided, further, that no such indebtedness so created shall in any part thereof be paid by the State, or from any State revenue,

tax or fund, but the same shall be paid by the said city of Chicago alone.

This section was added to the Constitution of 1870 by an amendment proposed by joint resolution of the Thirty-sixth General Assembly, adopted July 31, 1890 (Extra Session L. 1890, p. 8), and adopted by vote of the people on Tuesday, November 4, 1890. Proclaimed adopted November 29, 1890.

GENERAL REVENUE ACT.

An Act for the assessment of property and for the levy and collection of taxes. [Approved March 30, 1872. In force July 1, 1872]^a.

What property shall be assessed.] Section 1. That the property named in this section shall be assessed and taxed except so much thereof as may be, in this act exempted:

First: All real and personal property in this State.

Second: All moneys, credits, bonds or stocks and other investments, the shares of stock of incorporated companies and associations, and all other personal property, including property in transitu to or from this State, used, held, owned or controlled by persons residing in this State.

Third: The shares of capital stock of banks and banking companies doing business in this State.

Fourth: The capital stock of companies and associations incorporated under the laws of this State, except companies and associations organized for purely manufacturing and mercantile purposes, or for either of such purposes, or for the mining and sale of coal, or for printing, or for the publishing of newspapers, or for the improving and breeding of stock. [As amended by act in force July 1, 1905. L. 1905 p. 353.] See Sec. 18 Revenue Act of 1898, post.

a. Effect of Act as repealing others Acts:

The Revenue Act of March 30, 1872, in connection with the amendment of May 3, 1873, worked a repeal of all prior conflicting laws, whether found in general laws, or in special charters of cities and towns. *Edwards vs. People*, 88—340.

Clause 1:

The general rule is, the taxable situs of credits is the domicile of the owner. An exception to this rule arises when the instruments of credit are in the hands of an agent of the owner for the purpose of enabling such agent to transact the business of the owner, in which business the credits constitute, as it were, the subject-matter or stock in trade of such business, but where in the hands of an agent outside the state for purposes not constituting such business, the rule applies. *In re Appeal Birden*, 208—369.

Sec. 11 of the Building Loan and Homestead Association Act, in giving exemption was declared unconstitutional by 153—609. The Board of Review was not justified, however, in assessing stock exempted thereunder prior to this decision, to the present owner. Appeal of Wilmerton, 206—15.

While money employed in the business of the different agencies of the tax payer throughout the county might not be liable to tax in the jurisdiction where he has his domicile, still money in a depository in another State has its situs at the domicile of the owner and is taxable there. Tolman vs. Raymond, 202—197.

Where the owner is a non-resident, his securities remaining in this State in the hands of an agent, are only subject to taxation here, when they are left in the agent's hands for the purpose of having them renewed or collected, in order that the money, realized from such renewal or collection, may be realoaned by the agent as a permanent business. Reat vs. People, 201—469.

Intangible property, such as debts and choses in action, follows the domicile of the owner, but when the owner is not resident of this State and has the evidences of his credits in the hands of an agent of this State, then such credits are to be assessed in the hands of the agent. Ellis vs. People, 199—548.

The general rule is, the taxable situs of credits is the domicile of the owner. But an exception to the rule when the instruments which evidence the right of the owner to receive the indebtedness which constitutes the "credits" are in the hands of an agent of the owner for the purpose of enabling such agent to transact the business of the owner, in which business the credits constitute as it were, the subject-matter or stock in trade of such business. Matzenbaugh vs. People, 194—108.

A fund of Insurance Co. is subject to taxation so long as not paid put before April 1, notwithstanding orders to beneficiaries had been issued against it, prior to that time. Catholic Knights of Illinois vs. Board of Review, 198—441.

Personal property is not subject to taxation where it has no situs in this State, either actual or constructive. Maxwell vs. P., 189—551.

The domicile of the creditor determines situs of credit for purposes of taxation, and if he is non-resident and the credits are not kept and permanently employed in business in this State they are not subject to taxation. Hayward vs. Board of Review, 189—235.

Loans are taxable here when made by resident in other states. Scripps vs. Board of Review, 183—283.

The residence of the owner, if a resident of this State, determines where credits are taxable. Goldgart vs. P., 106—25.

That one who lived in New York and had no agent here, came here once in a while to look after interests which he had in this State, was not sufficient to prove his residence here as owner of credits, or situs of credits here. Goldgart vs. P., 106—25.

Credits of a non-resident, held and controlled here by an agent, are taxable here. Goldgart vs. P., 106—25.

This does not contemplate personal property which is passing through the State or is there for temporary purpose only, but does contemplate a boat of which the home port is here, and which is registered and put up here. *Irvin vs. New Orleans, etc., R. Co.*, 94—105.

Grain in warehouse placed there by agent, who bought on commission for principal, taxable against agent, and he has a lien under Sec. 256 of Revenue Act. *Walton vs. Westwood*, 73—125.

Where one whose domicile was in New York came into a city in a county of this State, to loan money on real estate for self and also as agent for his father, his uncle, and another, and so continued for several years, and while engaged thus, made the city his headquarters, that being the only business he had, he was taxable as to his choses in action as a resident in this State. *Board of Tazewell County vs. Davenport*, 40—197.

A person need not be a citizen of the State or domiciled therein, to be amenable to its taxing power. *Board of Tazewell County vs. Davenport*, 40—197.

Bonds deposited with the Auditor to secure redemption of bills issued by the banks, are taxable. *Bank vs. County*, 21—53.

Where a father gives money to his children and obtains from them an instrument by which they agree to pay interest during his lifetime, but have the right to give their notes therefor, which notes shall be added to the principal sums to be deducted therewith from their shares in the estate at his death, such constitutes an advancement and is not taxable in the hands of the father as a loan. It is proper to ask for injunction in court of equity to restrain collection of such tax. *Duckett vs. Gerig*, 223—284.

A butterfly dam, erected by Sanitary District of Chicago to protect people below it from danger, is taxable though it has never been used, is of no profit and has no market value. *Sanitary District vs. Young*, 285—351.

Money and credits of a fraternal beneficiary society are taxable the same as they were before the unconstitutional amendment of 1905 to Sec. 2 of Revenue Act, exempting moneys of such societies from taxation. *People vs. Mystic Workers*, 270—496.

All property is subject to taxation unless exempt by constitution and statutes passed in accordance therewith. *First Congregational Church vs. Board of Review*, 254—220, 222.

Net receipts of an insurance company are personal property and to be taxed the same as other property. *People vs. Cosmopolitan Ins. Co.*, 246—442.
Clause 2:

An executrix who pays debts of her deceased out of funds that she holds as guardian, and then in her personal capacity files a claim against the estate for the amount, does not thereby subject herself to a tax on the money thus filed claim for, as if her own. Estate of the ward should have been taxed therefor. *Schaeffer vs. Ardery*, 241—27.

It was proper to tax insurance policies in the hands of a guardian even though the money thereon was not due until sixty days after proof of death, and proof had not yet been made, on the theory that such claim comes within meaning of credits, being money due. *Cooper vs. Board of Review*, 207—472.

Stock in a foreign corporation is subject to be taxed in the hands of a resident owner, though the corporation has paid taxes thereon or upon its property in the state of creation. *Greenleaf vs. Board of Review*, 184—288; *Hawley vs. Malden*, 232, U. S. 1.

Credits are taxable, although the property for which the money is given is also taxed, but a debtor cannot be taxed on what he owes. *Goldgart vs. P.*, 106—25.

Where the term of a lease commenced March 1, and the rent was due January 1 following, the rent was not taxable until the latter date, for rent to become due is not taxable apart from land. *Seully vs. P.*, 104—349.

The State may tax money on hand on April 1, received from operation of railroads while under Federal control, by virtue of the Act of Congress providing for the operation and control of railroads enacted as a temporary war measure. *Wabash R. Co. vs. Board of Review*, 288—159.
Clause 4:

This clause applies to capital stock of a corporation incorporated under laws both of this and of other States. *Ohio, etc., R. Co. vs. Weber*, 96—443.

This provision applies to a company formed by the consolidation of two companies, one chartered here and other by another State. *Quincy Bridge Co. vs. Adams County*, 88—615.

Where a corporation is formed under our laws by consolidation of other companies, and where one of constituent companies was incorporated under the laws of this State, the new corporation thus formed is to be considered as one of the companies "incorporated under the laws of this State," within meaning of this clause. *Ohio R. Co. vs. Weber*, 96—443.

The exception in the fourth paragraph of this section of Revenue Act is unconstitutional as contravening the rule of equality set forth in Sec. 1, Art. 9, of the Constitution. *Consolidated Coal Co. vs. Miller*, 236—149; *People (ex rel.) vs. National Box Co.*, 248—141, 145; *P. vs. Federal Security Co.*, 255—561.

Since the amendment of 1905 the local assessors are required to assess the capital stock and franchises of companies organized for mercantile or manufacturing purposes or for certain other purposes enumerated herein. *Miller, Watt & Co. vs. O'Connell*, 251—260; *People vs. Federal Security Co.*, 255—561.

Property exempt from taxation.] Section 2^a. All property described in this section, to the extent herein limited, shall be exempt from taxation, that is to say:

First—All lands donated by the United States for school purposes, not sold or leased; all property of schools, including the real estate on which the schools are located; not leased by such schools or otherwise used with a view to profit.

Second—All property used exclusively for religious purposes, or used exclusively for school and religious purposes or for orphanages and not leased or otherwise used with a view to profit.

Third—All lands used exclusively as graveyards or grounds for burying the dead.

Fourth—All unentered government lands; all public buildings or structures of whatsoever kind, and the contents thereof, and the land on which the same are located belonging to the United States.

Fifth—All property of every kind belonging to the State of Illinois.

Sixth—All property belonging to any county, village, or city used exclusively for the maintenance of the poor; all swamp or overflowed lands belonging to any county, so long as the same remain unsold by such county; all public buildings belonging to any county, township, city or incorporated town, with the ground on which such buildings are erected; all property owned by any city or village located within the incorporated limits thereof; except as heretofore been leased or may hereafter be leased by such city or village to lessees who are bound under the terms of the lease to pay the taxes on such property. All property owned by any city or village located outside the incorporated limits thereof but within the same county when used for the purposes of a tuberculosis sanitarium, farm colony in connection with a house of correction, or nursery, garden or farm for the growing of shrubs, trees, flowers, vegetables and plants for use in beautifying, maintaining and operating, play grounds, parks, parkways, public grounds, buildings and institutions owned or controlled by such city or village; and all property owned by any city or village outside of the corporate limits of same used exclusively for municipal purposes.

Seventh—All property of institutions of public charity, all property of beneficent and charitable organizations, whether incorporated in this or in any other State of the United States and all property of old people's homes when such property is actually and exclusively used for such charitable or beneficent purposes, and not leased or otherwise used with a view to profit; and all free public libraries.

Eighth—All fire engine[s] or other implements used for the extinguishment of fires, with the buildings used exclusively for the safe keeping thereof, and the lot of reasonable size on which the building is located, when belonging to any city, village or town.

Ninth—All market houses, public squares or other public grounds used exclusively for public purposes; all works, machinery and fixtures belonging exclusively to any town, village or city, used exclusively for conveying water to such town, village or city; all works, machinery and fixtures of drainage districts, when used exclusively for pumping water from the ditches and drains of such district for drainage purposes.

Tenth—All property which may be used exclusively by societies for agricultural, horticultural, mechanical and philosophical purposes, and not for pecuniary profit.

[As amended by an act approved June 28, 1919, L. 1919, p. 770.] ..

a. In general:

Statute in force on first day of April determines whether property is exempt though petition is not considered by Board of Review until after July 1, when new law went into effect, as lien for taxes attaches to real estate on first day of April. *People vs. Logan Square Presbyterian Church*, 249—9.

Revenue Act of 1909 exempting property from taxation does not have retrospective operation. *People vs. Deutsche Gemeinde*, 249—132.

Equity will enjoin the collection of a tax upon property which is exempt from taxation. *Moline Water Power Co. vs. Cox*, 252—348.

One claiming exemption must clearly show that the property is within the statute. *Board of Directors vs. Board of Review*, 248—590, 595; *Church vs. Board of Review*, 254—220.

Party claiming tax exemption must state facts and not mere conclusions, and the taxing authorities must decide question of exemption from facts stated. *People vs. Deutsche Gemeinde*. 249—132.

Statutes exempting property from taxation will not be extended by judicial construction. *Board of Directors vs. Board of Review*, 248—590, 594; *Church vs. Board of Review*, 254—220.

Clause 1:

Provision of clause 1, exempting from taxation property of schools, is invalid. *People vs. Deutsche Gemeinde*, 249—132.

(Before the amendment of 1909 Clause 1 was thus worded: "First—All lands donated by the United States for school purposes, not sold or leased; all public school houses; all property of institutions of learning, including the real estate on which the institutions are located, not leased by such institutions or otherwise used with a view to profit." The following decisions dealt with Clause 1 as thus worded:)

The term "public school-house" (under Act of February 12, 1853, Sec. 3; 2 *Scates*, 1030, ed. 1858), is confined to buildings, the title and control of which are vested in school directors. *Pace vs. County Commissioners of Jefferson County*, 20—644.

Lands of a female seminary in one common inclosure, actually used for school grounds, gardens, orchards, woodlands for fuel, and pasturage of stock used in carrying on the institution, are exempt, but not a tract outside the common inclosure. *Monticello Female Seminary vs. P.*, 106—398.

A medical school, such as the Chicago Policlinic, not conducted with a view to profit, would come within the definition of an institution of learning. *Board of Review vs. Chicago Policlinic*, 233—268.

Proof that property belonged to an institution of learning was not enough to exempt it from taxation, but it must have been shown that it was not employed with a view to profit. *Monticello Seminary vs. Board of Review*, 242—477.

After payment of all expenses of the school, a surplus which furnished a means of livelihood to the owners of the property, was held not exempt from taxation. *Montgomery vs. Wyman*, 130—17.

This section exempts institutions of learning from taxation. Any school not conducted for profit, which gives courses of study not afforded by and of higher grade than taught in the public school system, even though it also gives the elementary studies, and even though the majority of the students avail themselves only of the lower grade of studies, may be considered an institution of learning. But the mere fact that it was a school not for profit would not exempt it; it must be a public school. *People vs. St. Francis Academy*, 233—26.

A petition to prevent collection of tax on property which was claimed exempt because used for educational purposes, must show either that it was a public school house, or an institution of learning. *McCullough vs. Board of Review*, 183—375.

Institution of learning is one for purpose of higher education. *McCullough vs. Board of Review*, 183—376.

Where title was in the Catholic Bishop for the use of the congregation and was used by an institution of learning as playground for scholars, the title to which was not in the school nor in any person who held title for the school, it was not exempt, for it must be held by the institution or in its name by some one authorized to hold title for it. *McCullough vs. Board of Review*, 186—17.

Land is subject to taxation notwithstanding it belongs to institution of learning, where buildings or institutions are not located upon it, and it is not used exclusively for interests of corporation. *Presbyterian Theological Seminary vs. P.*, 101—578.

A library association rented for profit is not an institution of learning nor does it fall within any of the exemptions of this section. *P. vs. Peoria Mercantile Library Associations*, 157—369 (1895).

Clause 2:

A religious publishing society authorized to establish and aid Sunday schools, supply Sunday school literature and otherwise promote Sunday school education and to publish and sell religious tracts and books for use in Sunday school in view of this section and Sec. 7 is exempt from a personal property tax on such books and supplies, where the primary purpose of the business is that of religious instruction and where profits of business are used for that purpose. *Cong. Pub. Society vs. Board of Review*, 290—108.

Provision of clause 2, Act of 1909, exempting property used exclusively for school and religious purposes is valid. *People vs. Deutsche Gemeinde*, 249—132.

Property held by religious corporation under a contract for a deed is not exempt. *People vs. Logan Square Presbyterian Church*, 249—11.

Credits consisting of bonds and notes belonging to a school and representing money derived from income of school are not exempt though it is stipulated they are to be used for maintenance of school. *Monticello Seminary vs. Board of Review*, 249—481.

Funds donated to school to establish free scholarships are exempt. *Monticello Seminary vs. Board of Review*, 249—481.

A parsonage is not exempt from taxation under laws of 1909. First Cong. Church vs. Board of Review, 254—220, 221.

[Before the amendment of 1909, clause 2 was thus worded: "Second—All church property actually and exclusively used for public worship and all parsonages or residences actually and exclusively used by persons devoting their entire time to church work, when the said buildings and the land on which said buildings are located (said land to be of reasonable size for the location of said buildings) are owned by the congregation or the church authorities and not used for pecuniary profit." The following decisions dealt with clause 2 as thus worded:]

So long as a building is used for public worship, it matters not that it is used also for other purposes non-secular, in aid of the main purpose, but where a building is separated from the one where public worship is had, by an alley and is used for Sunday school, social gatherings, and for janitor's rooms, it is taxable. In re Walker, 200—566.

That land may be exempt from taxation under this clause it must be used by a distinct congregation for public worship and conveyed for that purpose to the church. P. vs. Watseka Camp-meeting Association, 160—576 (1896).

Title to property must be in religious corporation or church society as a body, and must be actually and exclusively used for public worship and congregation must be organized, to entitle it to exemption. Private property used for church purposes is not exempt. Dedication of property is immaterial. P. vs. Anderson, 117—50.

Where a building erected for church purposes is partly rented out for business purposes, it is liable to taxation. First M. E. Church vs. Chicago, 26—482.

Parsonages or residences actually and exclusively used by persons devoting their whole time to religious work are not exempt, as such property itself is thereby used for secular purposes. People vs. First Cong. Church, 232—158.

Clause 3:

Lands owned by cemetery company are not exempt where they are separated from cemetery by highway, and not used as cemetery, notwithstanding they are platted as a cemetery. P. vs. Graceland Cemetery Co., 86—336.

The exemption does not extend to separate lot used for office and dwelling of custodian of burial grounds adjoining. Bloomington Cemetery Association vs. P., 170—379.

Clause 5:

Illinois University lands are exempt from taxation, as they are property of State. Board of Illinois Industrial University vs. Champaign County, 76—184; Same vs. P., 76—187.

Real estate acquired on foreclosure of mortgage to secure loan of school funds is exempt from taxation, as that belongs to the State. City of Chicago vs. P., 80—384.

Clause 6:

Land dedicated to trustees of town "for the benefit of the owners of lots fronting on the same" is subject to taxation and special assessment, as that is private property. McChesney vs. P., 99—216.

A toll-bridge owned and operated by a city for its own benefit, and located beyond the limits of such city, and in an adjoining town, is not exempt. In re Swigert, 123—267.

Where a city obtains property in return for money which a city treasurer had appropriated to his own use, though this money had been raised by taxation, the property is not exempt from taxation. *P. vs. City of Chicago*, 124—636.

Swamp lands in the hands of a county are not taxable. *Piatt vs. Goodell*, 97—84.

Clause 7:

See clause 2. *supra*, *Cong. Pub. Society vs. Board of Review*, where this section was considered in connection with Sec. 2, and in that case the question of a charity is discussed.

The Masonic Home of the Grand Lodge of Mason of Illinois, together with the land used for its maintenance, is exempt as the property of a public charity, and the fact there is a charge on the property in the nature of an incumbrance is not material. *Grand Lodge vs. Board of Review*, 281—480.

Trust fund held by directors appointed under city ordinance declaring the establishment of free public library to be erected with income from fund in future not within exemption in favor of "all free public libraries" until library is established. *Board of Directors vs. Board of Review*, 248—590.

A hospital which treats all its patients alike, and charges no fee where the patient is unable to pay, and a graduated fee according to ability to pay, but in no case makes any profit; is open to all without distinction as to race, religion or color; and is maintained by voluntary contributions of charitably inclined persons, is exempt from taxation. *German Hospital vs. Board of Review*, 233—246; *Board of Review vs. Chicago Polielinic*, 233—268.

A hospital not owned by the State or any municipal corporation, but which is open to all persons, regardless of creed, race or financial ability, except that persons having contagious diseases are not received, is a public charity and so exempt from taxation. *Sisters of St. Francis vs. Board of Review*, 231—317.

In order to be exempt from taxation the property must not only be devoted to charitable purposes, but the institution owning it must be one organized for charitable purposes and not for pecuniary profit. *People vs. Ravenswood Hospital*, 238—137.

A fraternal benefit society whose money is derived from assessments upon its members, is not a charitable institution, entitled to be exempted from taxation. *Catholic Knights of Illinois vs. Board of Review*, 198—411.

Property of Y. M. C. A. which is leased for profit is not exempt from taxation. *P. vs. Y. M. C. A. of Peoria*, 157—403 (1895).

The mere fact that an institution is a hospital, without proof that it is organized and conducted for charitable purposes, does not entitle it to exemption. *P. vs. Wabash R. Co.*, 138—85 (1891).

This clause refers only to charities created by the laws of this State. A foreign corporation "for the disseminating moral and religious instruction, and other charities, among sailors and laborers doing business on Western waters," was not exempt. *People vs. Seaman's Friend Society*, 87—246.

Clause 9:

A park and playground dedicated by the owner of land, in platting a sub-

division, "to the use of occupants of said sub-division," are not exempt as public grounds even though plat is accepted by the city. *People vs. Ricketts*, 248—428.

The occasional unauthorized use of public park by private persons to conduct automobile races, at which they charge an admission to persons willing to pay but not excluding other persons from the park, does not deprive public of right to have park exempt. *Petition of City of Robinson*, 281—429.

[Before the amendment of 1919, clause 9 was thus worded: "All market houses, public squares or other public grounds used exclusively for public purposes; all works, machinery and fixtures belonging exclusively to any town, village or city, used exclusively for conveying water to such town, village or city." The following decisions dealt with clause 9 as thus worded:]

Personal property of drainage district, consisting of steam boiler, engine and machinery located in district and used to carry on business of district is not exempt. *Nutwood Drain. & Levee Dist. vs. Board of Review*, 255—447, 448.

"Public grounds" refers solely to grounds which are open for the designated use of the general public. The Sanitary District's channels cannot be said to come within that definition, and so are taxable. *Sanitary District vs. Martin*, 173—247; *Same vs. Gifford*, 257—424; *Same vs. Board of Review*, 258—316.

Under the Constitution authorizing the legislature to exempt property of municipal corporations, providing it is by general law, and the act of legislature thereunder exempting "all market houses, public squares or other public grounds used exclusively for public purposes," lands within the district, included within the channel and right of way and devoted exclusively to the purpose of drainage and carrying off the sewage of the district, are exempt from taxation; but water power, dams, docks and such property located outside the Sanitary District are subject to taxation where located. Where the Sanitary District owns a single tract of land which has been assessed as a whole and leases a part of it, the district should make known what portion is used for public purposes, and failing so to do, the tax will stand, though part of property exempt, or, if possible, an apportionment should be made. *Sanitary District vs. Hanberg*, 226—480.

Clause 10:

Upon application by collector for judgment against land for taxes of non-exempt property, the decision of board of supervisors that property of fair association is exempt from taxation, is not binding on owner. *Peoria Fair Association vs. P.*, 111—559.

This section, as amended in 1909, includes "incorporated towns" within the term "incorporated village." Under it the county clerk must ascertain which taxing district or municipality has the highest aggregate per cent of tax levies. He thereupon reduces this to 3 per cent, and thereby fixes the county rate and certain other rates. The county rate so fixed must apply throughout the county and the rates for the other taxing districts must apply uniformly throughout such districts. *Cicero vs. Joseph Haas*, 244—551.

The amendment of 1909 is not a special tax, even if it does amount to a regulation of county or township affairs, because the different limitations in the act are based solely on population, and classification by population may be valid if the number of inhabitants creates substantial differences concerning the subject of the legislation. *Booth vs. Opel*, 244—317.

All public property used jointly, but exclusively, for public purposes and by societies for agricultural, horticultural, mechanical and philosophical purposes and not for pecuniary profit is exempt. *Petition of City of Robinson*, 281—429.

Rules for valuing personal property, etc.] Section 3. Personal property shall be valued as follows:

First: All personal property, except as herein otherwise directed, shall be valued at its fair cash value.

Second: Every credit for a sum certain, payable either in money or labor, shall be valued at a fair cash value, for the sum so payable if for any article of property, or for labor or services of any kind, it shall be valued at the current price of such property, labor or service.

Third: Annuities and royalties shall be valued at their then present value.

Fourth: 'The capital stock' of all companies and associations now or hereafter created under the laws of this state,^{2a} except³ companies and associations organized for purely manufacturing and mercantile purposes or for either of such purposes,⁴ or for the mining and sale of coal, or for printing, or for the publishing of newspapers, or for the improving and breeding of stock, shall be so valued by the State Board of Equalization (Tax Commission)⁵ as to ascertain and determine respectively, the fair cash value of such capital stock, including the franchise over and above the assessed value of the tangible property of such company or association, such board shall adopt such rules and principles for ascertaining the fair cash value of such capital stock as to it may seem equitable and just, and such rules and principles when so adopted, if not inconsistent with this act, shall be as binding and of the same effect as if contained in this act, subject, however, to such change, alteration or amendment as may be found from time to time, to be necessary by said board; Provided,⁵ that in all cases where the tangible property or capital stock of any company or association is assessed under this act, the shares of capital stock of such company or association shall not be assessed or taxed in this State. This clause shall not apply to the capital stock, or shares of capital stock of banks organized under the general banking laws of this State or under any special charter heretofore granted by

the Legislature of this State. [As amended by act in force July 1, 1905. L. 1905, p. 353.]

Clause 1:

Moneys, mortgages, bonds and securities should be valued the same as other property. *First National Bank vs. Holmes*, 246—362.

State tax against the property of the Illinois Central Railroad Company must be assessed on the same proportion of full cash value as other owners are assessed. *People vs. Illinois Central R. Co.*, 273—220.

Clause 4:

Under Sec. 25 of Tax Commission Law all powers and duties now conferred or imposed upon the State Board of Equalization in relation to the assessment of property for taxation shall be transferred to and exercised and performed by the State Tax Commission.

1. In general:

Sec. 27 must be read in connection with Sec. 3, and means only tangible property may be assessed by assessor. *Central Illinois Public Service Co. vs. Swartz*, 284—108.

Clause 4, Sec. 3, by giving the State Board of Equalization power to set out mode of ascertaining value of capital stock, does not violate Sec. 1, Art 9, nor Secs. 9 and 10 of the Constitution. *Coal Co. vs. Finlen*, 124—666; *La Salle Co. vs. Donoghue*, 127—27; *Porter vs. R. Co.*, 76—561; *Gas Co. vs. Higby*, 134—557; *Ottawa Glass Co. vs. McCaleb*, 81—556.

The power given the State Board of Equalization to make rules for assessment of capital stock of corporations is not an unconstitutional delegation of legislative power. *Porter vs. Rockford, etc., R. Co.*, 76—561; *R. Co. vs. Raymond*, 97—212.

Not unconstitutional under Sec. 1 of Art. 9, as the provision is uniform as to all of the same class. Nor is it a violation of Secs. 9 and 10 of Art. 9 of the Constitution, because the State Board only makes valuation and leaves the actual levy of taxes to the municipalities. *Hub vs. Hanberg*, 211—43.

An assessment by the State Board on the equalized value of the capital stock, where a tax had already been levied on the equalized value of the tangible property, is not double taxation. *Danville Mfg. Co. vs. Parks*, 88—463.

Capital stock and franchise of corporation are to be treated as personal property under statute, and a tax thereon is not a lien on real property of the company. *Belleville Nail Co. vs. P.*, 98—399.

That local assessors have assessed property which the statute commands them to assess at its fair cash value at one-third its cash value is no reason why assessment of railroad property by the State Board of Equalization at its full cash value should be cut down, for if any wrong was done, it was done by the town assessors and not the State Board. *Illinois, etc., R. and C. Co. vs. Stookey*, 122—358.

Where an assessment shows a very great disparity and discrimination, which could not reasonably have arisen from an error of judgment, courts will relieve against the violation of constitutional rule of uniformity of taxation. *People vs. K. & H. Bridge Co.*, 287—246; *Raymond vs. Trac. Co.*, 207—U. S. 20.

2. What is capital stock?

The value of the stock and franchise of a corporation may be properly arrived

at by adding to the value of the stock the debts of the corporation, and deducting the value of its tangible property. *Ottawa Glass Co. vs. McCaleb*, 81—556.

Capital stock means all property of corporation, whether tangible or intangible, and deduction of tangible property is required merely to avoid double taxation. *Pacific Hotel Co. vs. Lieb*, 83—602.

In distinction from terms "railroad track," "rolling stock," etc., "capital stock" means all property and rights of corporation of every kind and nature, wherever located. To this end the State Board of Equalization adopted a rule for the assessment of the capital stock of corporations, that the value of all the shares of stock, and the value of all the debt (excluding debt for current expenses) be added together, to ascertain the fair cash value of the "capital stock," or entire property (including franchise) of the corporation, and from this sum there be deducted the amount of the value of all tangible property, and that the remainder should be taken as the fair cash value of the "capital stock." *Ohio, etc., R. Co. vs. Weber*, 96—443; *State Board of Equalization vs. People*, 191—549.

A corporation is liable to be taxed in State of domicile upon all its property which is of such nature as to be taxable at residence of owner, and where it is a consolidated company, formed by a consolidation of a corporation in Illinois with one in Iowa, both formed for the construction of a bridge across the Mississippi River, being a corporation of this State, it is to be treated as domiciled here, and so would be here taxable on all its capital stock. *Keokuk Bridge Co. vs. P.*, 161—142.

The capital stock of a corporation embraces all the property belonging to the corporation, including all rights, corporate franchises, contracts, privileges, good will and everything of value, tangible or intangible, not in separate parcels but as a homogeneous unit, and the term is not limited to shares of stock owned by shareholders. *Central Illinois Public Service Co. vs. Swartz*, 284—109.

2a. Under the laws of this State:

Although the legislature has the power to impose taxation on a foreign corporation, to whatever extent it may choose in its discretion, as the condition upon which the corporation shall be allowed to exercise its franchises and privileges in the State, it has not empowered the State Board of Equalization to assess the capital stock of foreign corporations. Until proper legislation, the tax on foreign corporations is confined to its tangible property. *W. U. Telegraph Co. vs. Lieb*, 76—172.

3. Exception.

Prior to Act of 1875 no distinction was made in revenue cases between railway companies and manufacturing companies, but they were all assessed by the State Board of Equalization. *Danville Manuf. Co. vs. Parks*, 88—463.

Clause 4 valid in spite of this exception. *Coal Co. vs. Finlen*, 124—666; *Stirling Gas Co. vs. Higby*, 134—557.

Gas companies fall within the exception under this section, and are taxable under Secs. 32 and 33 of Revenue Act, which require the capital stock to be assessed. The exception of certain companies does not violate Sec. 1, Art. 9, of the State Constitution, as the legislature may well classify the different companies. *O. G. L. and C. Co. vs. Downey*, 127—201.

The statute, Secs. 32 and 33 of Revenue Act, requires the assessment by the local assessor of all corporations in the exception to Clause 4, Sec. 3. The others are assessed by the State Board and not the local assessor. *Hub vs. Hanberg*, 211—43.

The State Board of Equalization, and not the local assessor, must assess capital stock of life insurance companies. *P. vs. Ward*, 105—620.

Revenue law as changed since amendment of 1905 requires the local assessors to assess capital stock and franchises of companies organized for mercantile or manufacturing purposes or for certain other purposes enumerated therein, while the capital stock and franchises of other companies must be assessed by State Board of Equalization (Tax Commission). *P. vs. Lewy Bros. Co.*, 250—613; *Miller & Co. vs. O'Connell*, 251—260; *P. vs. Federal Security Co.*, 255—261.

If main purpose for which a telephone company is organized is construction operation and maintenance of telephone lines and exchanges, its franchise is not assessable by the local assessor, even though one of its declared objects of organization is the manufacture and sale of telephones and telephone apparatus. *Central Union Tel. Co. vs. Onken*, 271—638.

4. Purely manufacturing and mercantile corporations:

A corporation organized to buy and sell stocks and bonds of other companies and to guarantee such stocks and bonds is a mercantile corporation. *People vs. Federal Security Co.*, 255—561.

Corporation organized to manufacture and deal in crushed stone, lime and cement is organized for manufacturing purposes though it has power under its charter to build roads composed of sand, gravel and dirt. *Dolese & Shepard Co. vs. O'Connell*, 257—43, 44.

A corporation organized to manufacture and sell bakers' goods is a manufacturing and mercantile corporation. *H. H. Kohlsaat & Co., vs. Federal Security Co.*, 254—561.

Where corporation's charter designates as one of its corporate purposes "feeding and dealing in cattle and other live stock," it is not a "purely manufacturing" purpose and therefore its capital stock was to be valued by State Board. *Distilling Co. vs. P.*, 161—101.

Where corporation is chartered "to furnish light, heat and power for public and private uses," it is not a "purely manufacturing" corporation and so is to be valued by State Board of Equalization. *Evanston Electric Co. vs. Kochersperger*, 175—27.

5. Valued by State Board of Equalization (Tax Commission):

Under this clause the franchise of a corporation, excepting certain companies named, cannot be assessed for taxation by the local assessor but the fair cash value of the capital stock, including franchise and subtracting the tangible property assessed by local assessor, is to be assessed by State Board. *Central Ill. Public Service Co. vs. Swartz*, 284—108.

The State Board of Equalization may assess the capital stock of a corporation in the hands of the corporation, leaving it to deduct such tax from the dividends. This did not violate the rule that all property be taxed according to its value. *Ottawa Glass Co. vs. McCaleb*, 81—556.

State Board of Equalization does not act as a board of review in assessing capital stock, but as original assessor. *Pacific Hotel Co. vs. Lieb*, 83—602.

In the absence of fraud or want of power, the courts are powerless to give relief against an excessive assessment by the State Board of Equalization. *Coal R. C. Co. vs. Finlen*, 124—666. .

The fact that the shareholders of an Insurance Company were taxed on their shares was no objection to the assessment by the State Board of Equalization on the capital stock. *Republic, etc., Ins. Co. vs. Pollak*, 75—292.

Sec. 3, Clause 4, does not violate Secs. 9 and 10 of the Constitution, as the State Board does not levy taxes, but merely values and assesses the property. *Hub vs. Hanberg*, 211—43.

The right of a corporation to use city streets does not amount to a franchise but is only a right to exercise the corporate franchise on the property of the city and the local assessor has no power to assess such right for taxation. *Central Ill. Public Service Co. vs. Swartz*, 284—108.

5. Proviso:

The proviso in clause 4 sec. 3 means that where the property of a corporation has been assessed as a whole to the corporation, the share holders shall not be assessed upon their respective interests in the corporation. *Central Ill. Public Service Co. vs. Swartz*, 284—108.

Rules for valuing real estate.] Section 4. Real property shall be valued as follows:

First—Each tract or lot of real property shall be valued at its fair cash value, estimated at the price it would bring at a fair, voluntary sale.

Second—Taxable leasehold estates shall be valued at such a price as they would bring at a fair, voluntary sale for cash.

Third—When a building or structure is located on the right of way of any canal, railroad or other company leased or granted for a term of years to another, the same shall be valued at such a price as such building or structure and lease or grant would sell at a fair, voluntary sale for cash.

Fourth—In valuing any real property on which there is a coal or other mine, or stone or other quarry, the same shall be valued at such a price as such property, including the mine or quarry, would sell at a fair, voluntary sale for cash. See Section 18, Revenue Act of 1898, post.

A conveyance of the right to mine coal underlying a tract of land is not a mere grant of an easement but a sale of the coal itself and the conveyance of an interest in land, which may be assessed separately from the rest of the land. *Simmons Coal Co. vs. Board of Review*, 282—397.

A grant of mineral land reserving mining right amounts to the separation of lands and mines, and each must be listed separately for taxation. In *re Frances S. Mayor, Executrix*, 134—19 (1890).

Where coal has been conveyed separately from the land, the assessment of coal to one and land to another may be in proportion to the several holdings. *Cons. Coal Co. of St. L. vs. Baker*, 135—545 (1891).

It is proper to assess rights to coal separately where so owned, even though the land was assessed in full at the last quadrennial assessment and the assessment of the right to the coal is made before the next quadrennial. The person to object is the owner of the land. *People vs. O'Gara Coal Co.*, 231—172.

Under Secs. 6 and 7, Chap. 94 (*Hurd's Stat.* 1917, p. 1985), the right obtained by a lease of oil and gas is taxable property. *People vs. Bell*, 237—332.

Under Secs. 6 and 7 of Chapter 94, when the mining right in land has been conveyed, both the land and the mining right shall be taxed, and it is no defense by the owner of the mining right that the owner of the land paid taxes. *Sholl Bros. vs. People*, 194—24.

Where the owner of the remainder in fee becomes also assignee of life estate, he is bound to pay taxes, and so, semble, if holding life estate alone. *Prettyman vs. Walston*, 34—175.

Farm lands within the city limits are liable to taxation for municipal purposes, though not platted. *Cary vs. Pekin*, 88—154.

Personal property — when listed.] Section 5. Personal property shall be listed between the first day of May and the first day of July of each year, when required by the assessor, with reference to the quantity held or owned on the first day of May, in the year for which the property is required to be listed. Personal property purchased or acquired on the first day of May shall be listed by or for the person purchasing or acquiring it. See Section 15, Revenue Act of 1898, post.

When the capital of a banking institution, used throughout the year in the conduct of its business, is converted for a few days into government securities for the express purpose of defeating the imposition of any and all taxes, such investment is colorable and fraudulent, and its capital remains taxable to the same extent and in the same manner as if such conversion had never taken place. The Board of Review may assess such property. In re *People's Bank of Vermont*, 203—300.

Who shall list and what listed.] Section 6. Personal property shall be listed in the manner following:

First—Every person of full age and sound mind, being a resident of this state, shall list all his moneys, credits, bonds or stocks, shares of stock of joint stock or other companies (when the capital stock of such company is not assessed in this state), moneys loaned or invested annuities, franchises, royalties, and other personal property.

Second—He shall also list all moneys and other personal property invested, loaned or otherwise controlled by him as the agent or attorney, or on account of any other person or persons, company or corporation whatsoever, and all moneys deposited, subject to his order, check or draft, and credits due from or owing by any person or persons, body corporate or politic. [See Section 19.]

Third—The property of a minor child shall be listed by his guardian; if he have no guardian, then by the father, if living; if not, by the mother, if living; and if neither father or mother be living, by the person having such property in charge.

Fourth—The property of an idiot or lunatic, by his conservator; or if he has no conservator, by the persons having charge of such property.

Fifth—The property of a wife, by her husband, if of sound mind; if not, by herself.

Sixth—The property of a person for whose benefit it is held in trust, by the trustee; of the estate of a deceased person, by the executor or administrator.

Seventh—The property of corporations whose assets are in the hands of receivers, by such receivers.

Eighth—The property of a body politic or corporate, by the president, or proper agent or officer thereof.

Ninth—The property of a firm or company, by a partner or agent thereof.

Tenth—The property of manufacturers and others in the hands of agent, by and in the name of such agent, as merchandise.

Clause 1:

Party who uses property jointly with owner under contract with him is not liable for tax on such property. *Irvin vs. New Orleans, etc., R. Co.*, 94—105.

Clause 6:

Under Sec. 6 of Revenue Act, it is the duty of an executor or administrator to list the personal property of his deceased in his hands in that capacity, for the purpose of taxation. *McClellan vs. Bd. of Review*, 200—116; *People vs. Hibernian Banking Ass'n*, 245—522, 526.

Trustee may list property held by him on which no trust is declared, but if he does not do so, it may rightfully be assessed to such trustee in name of equitable owner. *P. vs. Western Seaman's Friend Society*, 87—246.

Clause 7:

This section of Revenue Act does not enlarge jurisdiction of local assessor so as to authorize him to assess capital stock of a life insurance company in the hands of receiver. Assessment properly by State Board of Equalization. *P. vs. Ward*, 105—620.

Clause 9:

Under our statute property may be assessed to a partnership and listed by a partner or agent, and such assessment cannot be regarded as an increase of a partner's individual assessment. *Carney vs. People*, 210—434.

Clause 10:

The assessor should list and assess the property in agent's name, under Sec. 83 of this act, where the agent neglects to list such property in his own name. Failure to add words "as agent" to such name will not invalidate assessment. (See cases given under Sec. 1. supra.) *Lockwood vs. Johnson*, 106—334.

Where the agent has listed property in name and on behalf of principal, he is not liable for tax thereon. *Deming vs. James*, 72—78.

Where personal property listed.] Section 7. Personal property, except such as is required in this act to be listed and assessed otherwise, shall be listed and assessed in the county, town, city, village or district where the owner resides. The capital stock and franchises of corporations and persons, except as may be otherwise provided, shall be listed and taxed in the county, town, district, city or village where the principal office or place of business of such corporation or person is located in this state. If there be no principal office or place of business in this state, then at the place in this state where any such corporation or person transacts business.

While the general rule is that the situs of personal property follows the domicile of the owner, it is a rule of convenience, subject to legislative change, and it is not ordinarily applied to property distributed along an extended railroad. *People vs. Ry. Co.*, 273—220, 263.

Money and choses in action belonging to a resident of this state should be assessed where the owner has residence, though they are in actual possession of an agent who resides in another township. *Ellis vs. People*, 199-548.

Personal property must be listed and assessed in the town, city, village or district where the owner resides. *Mahany vs. P.*, 138—311 (1891).

The exception in Sec. 7 refers to property held by guardians and persons in trust relations. *King vs. McDrew*, 31—418.

Where an owner resided in Kankakee County, but owned a farm in Iroquois County, the personal property on the farm in the latter county was properly assessable only in the former county, but, semble, if such property is permanently situated in a school district, it would be liable to school taxes in district where located. *King vs. McDrew*, 31—418.

But where one has a farm or a store or a manufactory in another county, property permanently connected with either of these concerns would be properly taxable where such concerns were situated. *Mills vs. Thornton*, 26—300.

Listing by the owner of personalty in one town, after he had knowledge that he was about to be assessed in another, to avoid assessment in his town of actual residence, is a fraud, and payment thereon will not benefit him. *Mahany vs. P.*, 138—311 (1891).

Farm property—owner not residing on farm.] Section 8. When the owner of live stock or other personal property connected with a farm does not reside thereon, the same shall be listed and assessed in the town or district where the farm is situated: Provided, if the farm is situated in several towns or districts, it shall be listed and assessed in the town or district in which the principal place of business on such farm shall be.

Where tracts in different counties are managed as one farm, personal property is to be listed and assessed in county where part of farm on which owner resides is situated, but property on another tract in the other county hav-

ing separate buildings must be listed and assessed where such land is situated. *People vs. Scheifley*, 252-486.

This section does not apply unless the owner of the stock "does not reside" upon the farm with which it is "connected," as where one owned three farms two in one county and the other partly in one and partly in the other, and these were all used as one farm. *P. vs. Caldwell*, 142-434.

Farm is a body of land, usually under one ownership, devoted to the raising of crops, or pasture, or both, and may consist of any number of acres and may lie in two counties. *P. vs. Caldwell*, 142-434 (1892).

Of manufactures in hands of agents.] Section 9. The property of manufacturers and others, in the hands of agents, shall be listed and assessed at the place where the business of such agent is carried on.

Purchaser's interest in exempted lands, personalty.] Section 10. When real estate is exempt in the hands of the holder of the fee, and the same is contracted to be sold, the amount paid thereon by the purchaser, with the enhanced value of the investment and improvement thereon until the fee is conveyed, shall be held to be personal property, and listed and assessed as such, in the place where the land is situated.

In transitu.] Section 11. Personal property, in transitu, shall be listed and assessed in the county, town, city or district where the owner resides: Provided, if it is intended for a business, it shall be listed and assessed at the place where the property of such business is required to be listed.

Nursery stock.] Section 12. The stock of nurseries, growing or otherwise, in the hands of nurserymen, shall be listed and assessed as merchandise.

Personal property of banks and others.] Section 13. The personal property of banks or bankers, brokers, stock-jobbers, insurance companies (except life insurance companies organized under the laws of this State), fraternal beneficiary societies (except those organized under the laws of this State), hotels, livery stables, saloons, eating houses, merchants and manufacturers, ferries, mining companies, and companies not specially provided for in this act, shall be listed and assessed in the county, town, city, village or district where their business is carried on, except such property as shall be liable to assessment elsewhere in the hands of agents. All persons, companies and corporations in this State, owning steamboats, sailing vessels, wharf boats, barges and other water craft, shall be required to list the same for assessment and taxation in the county, town, city, village or district, in which the same may belong, or be enrolled, registered or licensed, or kept when not enrolled, registered or licensed. All property and assets of life in-

insurance companies and fraternal beneficiary societies organized under the laws of this State (except such property as is by statute liable to assessment elsewhere) shall be assessed to the corporation or society as to a natural person in the name of the corporation or society in the county, town, city, village or district of its residence as herein provided, and not otherwise. The place where its office is located in its article [s] of incorporation shall be deemed its residence: Provided, its business is actually transacted at such office, but if it shall establish its principal office in any other place than the place named in its articles of incorporation, then the place where it transacts its principal business shall be deemed its residence for all the purposes of this act. In computing the taxable property of a life insurance company organized under the laws of this State, there shall be deducted from its gross assets the value of its real estate and of its personal property otherwise taxed, the net value of its outstanding policy contracts calculated according to the mortality table and rate of interest fixed by law, and all its other liabilities (except capital stock) of the same kind and nature as those treated or required to be shown as liabilities in the last annual sworn statement of said company to the insurance superintendent and therein deducted from its admitted assets in order to determine its unassigned funds or surplus, and the remainder shall be the amount of personal property for which the company shall be assessed.

In computing the taxable property and funds of a fraternal beneficiary society, organized under the laws of this State, there shall be deducted from its gross assets the value of its real estate, furniture, supplies and other personal property, otherwise taxed, the net value of its benefit certificates, and all other liabilities, as testified and shown by the latest report of the insurance superintendent, and the remainder shall be the property and funds for which the society shall be assessed.

All acts or parts of acts inconsistent with this act are hereby repealed. [As amended by act approved June 28, 1915. L. 1915, p. 565.]

Under this section personal property of brokers may be assessed in the town where the business is carried on, and this is proper though personal property is ordinarily assessed at the residence of the owner. *Carney vs. People*, 210—434.

If owner lists vessel in one of these three places, it cannot be taxed in other two. *Halstead vs. Adams*, 108—609.

If firm do business both as merchants and as manufacturers at two different places, they will list at each place property they had there on May 1st. *Selz vs. Cagwin*, 104—647.

Collection of tax on vessel out of proper district will be enjoined in chancery. *Vogt vs. Ayer*, 104—583.

Act of February 12, 1853, requiring property of banks, brokers and companies to be listed in place of business, was not repealed by Act of 1869. See Par. 7. *supra*. *Munson vs. Crawford*, 65—185.

Moneys and credits of a fraternal beneficiary society must be listed and assessed in city where society maintains its head office, though its principal officer may reside elsewhere. *People vs. Mystic Workers of the World*, 270—496.

Repeal.] Section 13a. All laws and parts of laws inconsistent herewith are hereby repealed. [Added by act in force July 1, 1905. L. 1905, p. 356.]

Section 14. The personal property of gas and coke companies, except the pipes laid down, shall be listed and assessed in the town, village, district or city where the principal works are located. Gas mains and pipes, laid in roads, streets or alleys, shall be held to be personal property, and listed and assessed as such in the town, district, village or city where the same are laid.

Gas pipes laid in roads or streets are personal property. *Shelbyville Water Co. vs. P.*, 140—545 (1892).

Section 15. The personal property of street railroad, plank road, gravel road, turnpike or bridge companies, shall be listed and assessed in the county, town, district, village or city where the principal place of business is located. The track, road or bridge shall be held to be personal property, and listed and assessed as such, in the town, district, village or city where the same is located or laid. Elevated railroads are railroads and not street railways within this section.

Knopf vs. Lake St. Elev. R. Co., 197—212.

Section 16. The horses, stages and other personal property of stage companies or persons operating stage lines, shall be listed and assessed in the county, town, city or district where they are usually kept.

Section 17. The personal property of express or transportation companies shall be listed and assessed in the county, town, district, village or city where the same is usually kept.

Consignee to list only his interest.] Section 18. No consignee shall be required to list, for taxation, the value of any property consigned to him for the sole purpose of being stored or forwarded, except to the extent of his interest in such property.

Listing on behalf of others.] Section 19. Persons required to list property on behalf of others, shall list it in the same place in which they are required to list their own; but they shall list it separately from their own, specifying in each case the name of the person, estate, company or corporation to whom it belongs.

Right to deductions is dependent upon filing of schedule. *Siegfried vs. Raymond*, 190—429.

Interest on bonds.] Section 20. Persons, for themselves or others, holding bonds or stocks of any kind, the principal of which bonds or stocks has been or may hereafter be exempt from taxation, shall list the amount of accrued interest on such bonds, without regard to the time when the same is to be paid.

Money secured by deed.] Section 21. Where a deed for real estate is held for the payment of a sum of money, such sum, so secured, shall be held to be personal property, and shall be listed and assessed as credits.

Removing — where owner assessed.] Section 22. The owner of personal property removing from one county, town, city, village or district, to another, between the first day of May and the first day of July, shall be assessed in either, in which he is first called upon by the assessor. The owner of personal property moving into this state from another state, between the first day of May and the first day of July, shall list the property owned by him on the first day of May of such year, in the county, town, city, village or district in which he resides: Provided, if such person has been assessed, and can make it appear to the assessor that he is held for tax of the current year on the property, in another state, county, town, city or district, he shall not be again assessed for said year. See Sections 7-9, Revenue Law of 1898, post.

“Moving into this State” means by the owner. Lumber shipped by a Michigan resident from there on May 1st to his lumber-yard in Chicago, arriving May 10th, is not subject to assessment for taxes in Cook County for that year. *Johnson vs. Lyon*, 106—64.

Caldwell was owner of three farms, two wholly in one county, and other partly in that and partly in another. His residence has been on land in latter county, where cattle had been purchased and shipped onto land in one county, there to be kept only temporarily, and from there removed to land in a second county, where they were kept for sale; they are taxable in the latter county. *P. vs. Caldwell*, 142—434 (1892).

This section does not apply where a resident brings property into the State, but only where a non-resident moves into the State. *Cook vs. Board of Review*, 195—36.

How place of listing fixed.] Section 23. In all questions that may arise under this act as to the proper place to list personal property, or when the same cannot be listed as stated in this act, if between several places in the same county, the place for listing and assessing shall be determined and fixed by the county board; and when between different counties or places in different counties, by the auditor of public accounts; and when fixed in either case, shall be as binding as if fixed by this act.

Schedule.] Section 24. Persons required to list personal property shall make out, under oath, and deliver to the assessor, at the time required, a schedule of the numbers, amounts, quantity, and quality of all personal property in their possession or under their control, required to be listed for taxation by them. It shall be the duty of the assessor to determine and fix the fair cash value¹ of all items of personal property, including all grain on hand on the first day of May² and in assessing notes, accounts, bonds and moneys, the assessor shall be governed by the same rules of uniformity that he adopts as to value in assessing other personal property, and the assessor is hereby authorized to administer the oath required in this section and if any person shall refuse to make such schedule under oath, then the assessor shall list the property of such person according to his best judgment and information³ and shall add to the valuation of such list an amount equal to fifty per cent. of such valuation⁴ and if any person making such schedule shall swear falsely he shall be guilty of perjury and punished accordingly. Any person so required to list personal property who shall refuse, neglect or fail when requested by the proper assessor, so to do, shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined in any sum not exceeding two hundred dollars and the several assessors shall report any such refusal to the county attorney whose duty it is hereby made to prosecute the same. [As amended by act approved May 31, 1879. In force July 1, 1879. L. 1879, p. 152.] See Sections 17-20, Revenue Law of 1898, post.

1. Assessors to fix value:

Assessor has sole power to fix valuation in first instance; but tax-payers may require copy of schedule, and must at their peril take notice thereof, and if excessive or otherwise erroneous. have it corrected. *Humphreys vs. Nelson*, 115—45.

If, after owner has delivered list of his taxable property to assessor, who accepts it without objection, the latter, without notice to owner, increases assessment above amount listed, equity will enjoin collection of increased tax. *Cleghorn vs. Postlewaite*, 43—428; *National Bank vs. Cook*, 77—622.

Determination of valuation is left wholly to assessor. No valuation by owner provided for. assessor is not bound by his valuation, but the tax-payer's protection is to ask for copy of assessment (Sec. 84), which request should be made at time of furnishing list to assessor. *Cleghorn vs. Postlewaite*, 43—430, was under Acts of 1845, 1849 and 1853. *Humphreys vs. Nelson*, 115—45.

Assessor has sole power to fix valuation in first instance. *Humphreys vs. Nelson*, 115—45.

The town assessor cannot lawfully increase such assessment, without notice to tax-payer, after he has made assessment of personal property of tax-payer, and entered same on his books, whether such increase be attempted

by raising valuation of property already listed, or by adding other property to list. *P. vs. Ward*, 105—620.

The assessor has no power to alter assessment without notice to tax-payer, after accepting list of his personal property from him. *McConkey vs. Smith*, 73—313; *National Bank vs. Cook*, 76—622.

Only where assessor accepted valuation given in such schedule, is it essential to give notice to property owner before increasing valuation. *Tolman vs. Salomon*, 191—203.

In absence of evidence contra, assessor's valuation presumed correct. *Leper vs. Pulsifer*, 37—110.

Power to value property for taxation rests exclusively in officers designated by statute and an attempted assessment by any other authority is void. *Central Ill. Public Service Co. v. Swartz*, 284-108.

2. Items of personal property:

The location on the first of May controls listing of personal property. *P. vs. Caldwell*, 142—434 (1892).

3. Assessor shall list property:

Law does not require assessors to examine officers of a corporation against which a tax is assessed, upon their refusal or neglect to schedule on behalf of the corporation, but they may value it independently of the company. *New York, etc., Stock Exchange vs. Gleason*, 121—502.

4. Penalty:

This penalty will not be adjudged against estate for false return of executor. *Leper vs. Pulsifer*, 37—110-121.

The provision making it a misdemeanor to refuse, neglect or fail to make out a schedule was omitted when such section was re-enacted as sec. 19 of Revenue law of 1898, and is repealed. *People vs. Fisher*, 274-117.

Unclassified:

It is no defense, as to property that was assessed, that ministerial officers have omitted to assess all property subject to taxation. *Dunham vs. Chicago*, 55—357.

A tax-payer is bound by his own statements as to the nature, title and value of the property made in the list which he returns for taxation, in the absence of any evidence of fraud, accident or mistake. *People vs. Ry. Co.*, 273—220, 258.

Form of schedule.] Section 25. Such schedule, when completed by the assessor in extending in a separate column the value of such property, shall truly and distinctly set forth:

First—The number of horses of all ages, and the value thereof.

Second—The number of cattle of all ages, and the value thereof.

Third—The number of mules and asses of all ages, and the value thereof.

Fourth—The number of sheep of all ages, and the value thereof.

Fifth—The number of hogs of all ages, and the value thereof.

Sixth—Every steam engine, including boilers, and the value thereof.

Seventh—Every fire or burglar-proof safe, and the value thereof.

Eighth—Every billiard, pigeon hole, bagatelle or other similar tables, and the value thereof.

Ninth—Every carriage and wagon, of whatsoever kind, and the value thereof.

Tenth—Every watch and clock, and the value thereof.

Eleventh—Every sewing or knitting machine, and the value thereof.

Twelfth—Every piano forte, and the value thereof.

Thirteenth—Every melodeon and organ, and the value thereof.

Fourteenth—Every franchise, the description and the value thereof.

Fifteenth—Every annuity and royalty, the description and the value thereof.

Sixteenth—Every patent right, the description and the value thereof.

Seventeenth—Every steamboat, sailing vessel, wharf-boat, barge or other water craft, and the value thereof.

Eighteenth—The value of merchandise on hand.

Nineteenth—The value of material and manufactured articles on hand.

Twentieth—The value of manufacturers' tools, implements and machinery (other than boilers and engines, which shall be listed as such).

Twenty-first—The value of agricultural tools, implements and machinery.

Twenty-second—The value of gold or silver plate and plated ware.

Twenty-third—The value of diamonds and jewelry.

Twenty-fourth—The amount of moneys of bank, banker, broker or stock-jobber.

Twenty-fifth—The amount of credits of bank, banker, broker or stock-jobber.

Twenty-sixth—The amount of moneys other than of bank, banker, broker or stock-jobber.

Twenty-seventh—The amount of credits other than of bank, banker, broker or stock-jobber.

Twenty-eighth—The amount and value of bonds or stocks.

Twenty-ninth—The amount and value of shares of capital stock of companies and associations not incorporated by the laws of this State.

Thirtieth—The value of property such person is required to list as a pawnbroker.

Thirty-first—The value of property of companies and corporations other than property hereinbefore enumerated.

Thirty-second—The value of bridge property.

Thirty-third—The value of property of saloons and eating-houses.

Thirty-fourth—The value of household or office furniture and property.

Thirty-fifth—The value of investments in real estate and improvements thereon required to be listed under this act.

Thirty-sixth—The value of all other property required to be listed.

Net receipts of insurance company are properly listed as "property not enumerated." *People vs. Cosmopolitan Ins. Co.*, 246—142.

Where board of review assesses personal property under 36th class the presumption arises that such assessment was for property not included under any of the first 35 classes. *Holt vs. Hendee*, 248—288.

The property owner must make a schedule of steam engines, boilers, etc., whether attached to realty or not. The legislature may make realty personally for purposes of taxation. *Johnson vs. Roberts*, 102—655.

Engines and boilers permanently attached to realty are personalty, for purposes of taxation. *Shelbyville Water Co. vs. P.*, 140—545 (1892).

A party having money in bank on the first day of May is required by this section to list the same for taxation, notwithstanding that he owes debts poses of taxation. *Shelbyville Water Co. vs. P.*, 140—545 (1892).

Pumping machinery for water, electric light wires and water mains is personal property, for purposes of taxation. *Shelbyville Water Co. vs. P.*, 140—545 (1892).

Money due under a contract for the sale of land is "credit." *Griffin vs. Board of Review*, 184—277.

When assessor may examine under oath and list property.]

Section 26. That whenever the assessor shall be of opinion that the person listing property for himself or for any other person, company or corporation, has not made a full, fair and complete schedule of such property, he may examine such person under oath in regard to the amount of the property he is required to schedule, and for that purpose he is authorized to administer oaths; and if such person shall refuse to answer under oath and a full discovery make, the assessor may list the property of such person or his principal, according to his best judgment and information. If the person so examined shall swear falsely, he shall be guilty of perjury, and punished accordingly.

(See also cases under Section 24 of this act.)

Assessor in administering oath to take testimony must do so within the territorial limits in which he is authorized to act. He cannot administer oath outside the township. *Van Dusen vs. P.*, 78—645.

Assessor may list and assess omitted property without notice to railway company. *Wabash, etc., R. Co. vs. Johnson*, 108—11.

Rules for listing credits — what debts deducted from credits.]

Section 27. In making up the amount of credits which any person is required to list for himself, or for any other person, company or corporation, he shall be entitled to deduct from the gross amount of credits the amount of all bona fide debts owing by such person, company or corporation, to any other person, company or corporation for a consideration received; but no acknowledgment of indebtedness not founded on actual consideration, believed when received to have been adequate, and no such acknowledgment made for the purpose of being so deducted, shall be considered a debt within the meaning of this section; and so much only of any liability, as surety for others, shall be deducted as the person making out the statement believes he is legally and equitably bound, and will be compelled to pay on account of the inability or insolvency of the principal debtor; and if there are other sureties who are able to contribute, then only so much as the surety in whose behalf the statement is made will be bound to contribute; Provided, that nothing in this section shall be so construed as to apply to any bank, company or corporation exercising banking powers or privileges, or to authorize any deductions allowed by this section from the value of any other item of taxation than credits.

Liabilities on outstanding beneficiary certificates as computed by standard tables and shown by report of the State insurance superintendent are not deductible liabilities. *People vs. Mystic Workers of the World*, 270—496. The Illinois Central Railroad Company is entitled, in listing its property for the purpose of State tax to deduction of bona fide debts from credits listed by it. *People vs. Illinois Cent. R. Co.*, 273—220.

Property owners are required to make a statement of their credits and deductions. It is not for them to say the indebtedness equaled or exceeded the credits, and therefore refuse to list credits. Failing to do this, they cannot later enjoin assessment by Board of Review of credits omitted in assessments of past years. *Peirce vs. Carlock*, 224—608.

The deduction of debts from credits must be done in the manner provided by this section. It is not permitted to say the indebtedness equals or exceeds the credits. *Morris vs. Jones*, 150—542 (1894).

Credits are not excluded by section above as an item of assessable property. *Griffin vs. Board of Review*, 184—278.

The statute does not allow deductions against tangible property owned by a tax-payer, no matter what may be the character the property. *Morris vs. Jones*, 150—542 (1894).

What debts not deducted.] Section 28. No person, company or corporation shall be entitled to any deduction from the amount of any bonds, stocks, or money loaned, or on account of any bond, note or obligation of any kind, given to any insurance company on account of premiums or policies, nor on account of any unpaid subscription to any religious, literary, scientific or charitable institution or society, nor on account of any subscription to or instalment payable on the capital stock of any company, whether incorporated or unincorporated.

Deductions verified by oath — perjury — fines — statements preserved.] Section 29. In all cases where deductions are claimed from credits, the assessor shall require that such deductions be verified by the oath of the person, officer or agent claiming the same; and any such person, officer or agent, knowingly or willfully making a fraudulent statement of such deductions claimed, so verified by affidavit, shall be liable to a fine of not less than \$100 nor more than \$1,000, in addition to all damages sustained by the state, county, or other local corporation, to be recovered in any proper form of action in any court of competent jurisdiction in the name of the People of the State of Illinois. Such fines when recovered, shall be paid into the county treasury, and the damages, when collected, shall be paid to whom they belong. The assessor shall preserve the statement of deductions thus claimed, so verified by affidavit, and when he returns the assessment books shall file the same with the county clerk, to be kept on file in his office for two years, and at the expiration of such time said statement of deductions shall be destroyed by said clerk, but, in the meantime, shall be subject only to the inspection of the officers charged with the execution of this law.

Deductions must be verified by oath. *Sellers vs. Barrett*, 185—475.

Shares of stock — when and how assessed.] Section 29a. The stockholders of every Mutual Building, Loan and Homestead Association for the purpose of building and improving homesteads and loaning money to the members thereof only, whether such association is organized under the laws of this state or of any other state or territory of the United States, shall list for taxation with the local assessor where such stockholders reside, the number of shares of stock of such association owned by them respectively and the value thereof on the first day of April in each year, and the same shall be assessed against such stockholders and the taxes thereon collected in the same manner as on other personal property: Provided, That no stock of such association while loaned upon by and

pledged as security to the association issuing it, to an amount equal to the par value of such stock, shall be subject to assessment. [As amended by act approved and in force April 18, 1901. L. 1901, p. 265.]

The proviso in the amendment to 29a of the Revenue Act. that no stock of building and loan associations shall be taxed while loaned upon, is within the inhibition of Sec. 1, Art. 9, of the Constitution, and so invalid. Assessing the stock in the hands of the stockholders does not operate to relieve the corporation from the burden of taxation, as the stock represents the corporate property. In re St. Louis Loan & Investment Co., 194—609.

Under the Act of 1895 (J. & A., Paragraphs 9244 et seq.), it was illegal to assess a building and loan association on its personal property, capital stock and franchise; should have assessed the shareholders. Olney Loan vs. Parker, 196 Ill. 388.

The amendment of 1895, Secs. 29a, b, c and d, to Revenue Act (Hurd's 1917, p. 2428), is not retroactive in its operation. Appeal of Wilmerton, 206—15.

When stockholders reside out of state.] Section 29b. The shares of stock of all stockholders residing without this State of such associations shall be assessed by the local assessor where such associations are located, and, for the purpose of collecting the taxes thereon, a lien is hereby created upon such stock. [Added by Act approved and in force April 30, 1895. L. 1895, p. 301.]

Mode of determining value of stock.] Section 29c. In determining the value of such stock for the purpose of taxation the value of the real estate owned by such associations shall be first deducted from their assets and such real estate shall be assessed in the manner now provided by law. [Added by Act approved and in force April 30, 1895. L. 1895, p. 301.]

Shares of stock — how assessed — emergency.] Section 29d. The shares of stock and property of every such mutual building, loan and homestead association shall be assessed as herein provided and not otherwise.

Whereas, assessments are required to be made between the first day of May and the first day of July, 1895, therefore an emergency exists and this act shall take effect and be in force from and after its passage. [Added by Act approved and in force April 10, 1895. L. 1895, p. 301.]

Listing and valuing property of banks, etc.] Section 30. Every bank (other than banks incorporated under the banking laws of this State or of the United States) banker, broker or stock jobber, shall at the time fixed by this act for listing personal property, make out and furnish the assessor a sworn statement showing, First, the amount of money on hand or in transit. Second, the amount of

funds in the hands of other banks, bankers, brokers or others, subject to draft. Third, the amount of checks or other cash items; the amount thereof not being included in either of the preceding items. Fourth, the amount of bills receivable, discounted or purchased, and other credits, due or to become due, including accounts receivable, and interest accrued but not due, and interest due and unpaid. Fifth, the amount of bonds and stocks of every kind, and shares of capital stock or joint stock of other companies or corporations, held as an investment or any way representing assets. Sixth, all other property appertaining to said business, other than real estate (which real estate shall be listed and assessed as other real estate is listed and assessed under this act). Seventh, the amount of all deposits made with them by other parties. Eighth, the amount of all accounts payable other than current deposit accounts. Ninth, the amount of bonds and other securities exempt by law from taxation, specifying the amount and kind of each, the same being included in the preceding fifth item. The aggregate amount of the first item shall be listed as moneys. The amount of the sixth item shall be listed the same as other similar personal property is listed under this act. The aggregate amount of the seventh and eighth items shall be deducted from the aggregate amount of the second, third and fourth items of said statement and the amount of the remainder, if any, shall be listed as credit. The aggregate amount of the ninth item shall be deducted from the aggregate amount of the fifth item of such statement and the remainder shall be listed as bonds or stocks. [As amended by act approved May 15, 1903. In force July 1, 1903. L. 1903, p. 294.]

Pawnbroker.] Section 1. Every person or company engaged in the business of receiving property in pledge or as security for money or other thing advanced to the pawnor or pledger shall be held to be a pawnbroker, and shall, at the time required by this act, return, under oath, the value of all property pledged and held by him, as a pawnbroker, on hand on the first day of May, annually, and taxes shall be charged upon the fair cash value of such property, to such pawnbroker, the same as other property. See Sections 7-9 Revenue Act of 1898, post.

Rules for listing and valuing property of certain corporations.] Section 32. Bridges, express, ferry, gravel road, gas, insurance, mining, plank road, stage, steamboat, street railroad, transportation, turnpike and all other companies and associations incorporated under the laws of this State other than banks organized under any special or general law of this State and companies and associations

organized for purely manufacturing and mercantile purposes, or for either of such purposes, or for the mining and sale of coal, or for printing, or for publishing of newspapers, or for the improving and breeding of stock, shall in addition to the other property required by this act to be listed, make out and deliver to the assessor a sworn statement of the amount of its capital stock, setting forth particularly:

First—The name and location of the company or association.

Second—The amount of capital stock authorized, and the number of shares into which such capital stock is divided.

Third—The amount of capital stock paid up.

Fourth—The market value, or if no market value, then the actual value of the shares of stock.

Fifth—The total amount of all indebtedness, except the indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property.

Sixth—The assessed valuation of all its tangible property; such schedule shall be made in conformity to such instruction and forms as may be prescribed by the Auditor of Public Accounts (Tax Commission). In all cases of failure or refusal of any person, officer, company or association to make such return or statement, it shall be the duty of the assessor to make such return or statement from the best information which he can obtain. [As amended by act in force July 1, 1905. L. 1905, p. 353.]

See cases cited under section 3, clause 4.

Under Sec. 27 of Tax Commission Law whenever in any law relating to assessment of property for taxation any abstracts or schedules are required to be filed with, or duty imposed upon, or vested in either the Auditor of Public Accounts or the State Board of Equalization, such abstracts or schedules shall be filed with, such duty and power shall be discharged by the Tax Commission.

Gas companies are assessable under these sections of the Act, and not under Sec. 3, Clause 4. *O. G. L. and C. Co. vs. Downey*, 127—201.

Clause 6:

This cannot be taken advantage of by the corporation; and it does not excuse Board of Equalization from its duty to value the capital stock of all companies (prior to 1875). that no schedule was returned by either tax-payer or assessor. *Pacific Hotel Co. vs. Lieb*, 83—602.

Schedule returned — Forwarded to auditor — Tax Commission to assess capital stock.] Section 33. Such statements shall be scheduled by the assessor; and such schedule, with the statements so scheduled, shall be returned by the assessor to the county clerk. Said clerk shall, at the time he makes his report of assessment, forward to the auditor all such schedules and statements so returned to him. The auditor shall, annually, on the meeting of the state

board of equalization, lay before said board the schedules and statements herein required to be returned to him; and said board shall value and assess the capital stock of such companies or associations, in the manner provided in this act.

Under Sec. 26 and 27 of Tax Commission law (laws 1919, p. 724), all powers and duties conferred upon the State Board of Equalization and upon the Auditor of Public Accounts for assessment of property for taxation are transferred to and to be exercised by the Tax Commission, and whenever, in any law relating to the assessment of property for taxation any schedule or other papers are required to be filed with, or duty imposed upon or other power vested in either the Auditor of Public Accounts or State Board of Equalization, such schedule, etc., shall be filed with, such duty and power shall be discharged by the State Tax Commission.

Franchise to be listed and valued.] Section 34. Every person owning or using a franchise granted by any law of this state, shall, in addition to his other property, list the same as personal property, giving the total value thereof.

Capital stock of railway corporation is personal property. Franchise is personal property. *Cooper vs. Corbin*, 105—224.

Tax on capital stock of corporation is personal property tax. *Parsons vs. Gas, etc., Co.*, 108—380, citing *Cooper vs. Corbin*.

State and national banks — How assessed and taxed.] Section 35. The stockholders of every kind of incorporated bank located within this State, whether such bank has been organized under the banking law of this State, or of the United States, shall be assessed and taxed upon the value of their shares of stock therein, in the county, town, district, village or city where such bank or banking association is located and not elsewhere, whether such stockholders reside in such place or not. [The value of such shares of stock for purpose of taxation, shall be ascertained by deducting from the value of all the shares of the capital stock of such bank, the fair cash value of the real estate owned by such bank or banking association situated in the county in which such bank or banking association is located as determined by the assessor.] Such shares shall be listed and assessed with regard to the ownership and value thereof as they existed on the first day of April annually, subject, however, to the restriction that taxation of such shares shall not be at a greater rate than is assessed upon any other moneyed capital in the hands of individual citizens of this State, in the county, town, district, village or city where such bank is located. The shares held in this State, of capital stock of National banks not located in this State, shall not be required to be listed under the provisions of this act. [As amended by act approved May 15, 1903. In force July 1, 1903. L. 1903, p. 295. [Portion in square brackets [] added.]

Shares of national banks held by non-residents of State, taxable where the bank is situated. *First Nat. Bank vs. Smith*, 65—44.

There is no limitation by United States statutes on State's power of taxation, except that its taxation of shares of national banks must (under United States statutes) be at place where bank is located, and must be at rate not exceeding that of State's taxation of State banks and moneyed capital. *First National Bank vs. Smith*, 65—44; *Baker vs. First National Bank*, 67—297.

It is not beyond legislative power to fix the situs of bank stock. Such provision is valid. *Danville Banking Co. vs. Parks*, 88—170.

Shares of national bank stock were taxable in 1865-6 at same rate as shares in State banks. *P. vs. Bradley*, 39—130.

Having collected illegal taxes on national bank stock, such cannot be recovered back, nor can refunding be compelled. Semble, that such stock is taxable in some form, objection being made only to mode of collection, which stockholders waived by voluntary payment. *P. vs. Miner*, 46—374.

The shares of stock or personal property of every bank (State or private) in this State shall be assessed at its full, fair, cash value, and the assessed value of its real estate is not to be deducted from the value of such shares or personal property, but such real estate shall be listed and assessed as other real estate is listed and assessed under this Act. (See Sec. 5219 of R. S. of U. S.) So long as shares of stock and real estate of all banks and bankers, whether local or national, are assessed in that manner, it is lawful, nor is such double taxation. *Illinois National Bank vs. Kinsella*, 201—31.

List of stockholders to be kept, etc.] Section 36. In each such bank there shall be kept at all times a full and correct list of the names and residences of its stockholders, and of the number of shares held by each; which list shall be subject to the inspection of the officers authorized to assess property for taxation; and it shall be the duty of the assessor to ascertain and report to the county clerk a correct list of the names and residences of all stockholders in any such bank, with the number and assessed value of all such shares held by each stockholder.

Shares listed in names of owners — Tax extended.] Section 37. The county clerk, to whom such returns are made, shall enter the valuation of such shares in the tax lists, in the names of the respective owners of the same, and shall compute and extend taxes thereon the same as against the valuation of other property in the same locality.

How tax on shares collected — Lien.] Section 38. The collector of taxes, and the officer or officers authorized to receive taxes from the collector, may, all or either of them, have an action to collect the tax assessed on any share or shares of bank stock from the avails of the sale of such share or shares; and the tax against such

share or shares shall be and remain a lien thereon till the payment of said tax.

Dividends to be held for taxes — Shares sold.] Section 39. For the purpose of collecting such taxes, it shall be the duty of every such bank, or the managing officer or officers thereof, to retain so much of any dividend or dividends belonging to such stockholders as shall be necessary to pay any taxes levied upon their shares of stock, respectively, until it shall be made to appear to such bank or its officers that such taxes have been paid; and any officer of any such bank who shall pay over or authorize the paying over of any such dividend or dividends, or any portion thereof, contrary to the provisions of this section, shall thereby become liable for such tax; and if the said tax shall not be paid, the collector of taxes where said bank is located shall sell said share or shares to pay the same, like other personal property. And in case of sale the provision of law in regard to the transfer of stock when sold on execution shall apply to such sale.

A bank may enjoin the collection of an illegal tax on its stockholders on the theory that as it is required to pay the taxes and deduct from dividends, such would save multiplicity of suits. *Knopf vs. First Natl. Bank*, 173—331.

Manner of listing and valuing the property of railroads — Schedules — 1st May.] Section 40. Every person, company or corporation owning, operating or constructing a railroad in this state, shall return sworn lists of schedules of the taxable property of such railroad, as hereinafter provided. Such property shall be listed and assessed with reference to the amount, kind and value on the first day of May of the year in which it is listed. See Sections 7-9, 53, Revenue Act of 1898, post.

Revenue act divides property of railroad companies into two classes, denominated "railroad track" and that not so denominated, and use to which land is put and not title determines whether it shall be assessed by State Board of Equalization or local assessor. *People vs. Ill. Northern R. Co.*, 248—532.

Railroad company's right of way should be assessed as a unit. *People (ex rel.) vs. Illinois N. R. Co.*, 248—532.

The elevated roads in Chicago, being incorporated under the general railroad law of 1872, having powers of eminent domain, and authority to use a right of way of their own, are taxable by the State Board of Equalization, notwithstanding they confine themselves to one county, and run on streets part of the way. *Knopf vs. Lake Street Elev. Rd.*, 197—212.

Where the passenger and freight depots are located in this State, and also the roundhouse, switch yards and terminal facilities, but the railroad reaches these over a leased track, and is itself located in another State, it is nevertheless operating in this State. Where the property is used alto-

gether for railroad purposes, and is all necessary in the operation and management of the road, it is properly taxable by the State Board of Equalization. *Ry. Co. vs. People*, 156—437.

As against the objection to judgment for delinquent taxes that the description of the property was erroneous, it must be presumed that the county clerk copied the owner's description of it, and so the objector is estopped. *Cairo, etc., R. C. vs. Mathews*, 152—153 (1894).

Railroad company will be taxed on an easement in gross. *R. R. Co. vs. Hildebrand*, 136—447.

The fact that a railroad company has leased its road and rolling stock for 999 years does not exempt it from taxation therefor. *Archer vs. Rd. Co.*, 102—493.

Railway property acquired by perpetual lease under a charter which authorizes it to acquire, "by lease, purchase or otherwise, all property necessary to its business," and that all property so acquired shall become part of property of the corporation, is taxable as property of such company. *Huck vs. C. and A. R. Co.*, 86—352; *P. vs. Ry. Co.*, 248—532; *P. vs. Ferry Co.*, 257—452.

While leased road may be part of main track within the meaning of this section, a road on which the company occasionally runs trains by license is not. *Cook County vs. C., B. and Q. R. Co.*, 35—460.

Tax-payer is bound by schedule in the absence of fraud accident or mistake. *People v. Illinois Cent. R. Co.*, 273—220, 258.

Time of filing schedule — Form of same.] Section 41. They shall, in the month of May of the year 1873, and at the same time in each year thereafter when required, make out and file with the county clerks of the respective counties in which the railroad may be located, a statement of schedule showing the property held for right of way, and the length of the main and all side and second tracks and turnouts in such county, and in each city, town and village in the county, through or into which the road may run, and describing each tract of land, other than a city, town or village lot, through which the road may run, in accordance with the United States surveys, giving the width and length of the strip of land held in each tract, and the number of acres thereof. They shall also state the value of improvements and stations located on the right of way. New companies shall make such statement in May next after the location of their roads. When such statement shall have been once made, it shall not be necessary to report the description as hereinbefore required, unless directed so to do by the county board; but the company shall, during the month of May, annually, report the value of such property, by the description set forth in the next section of this act, and note all additions or changes in such right of way as shall have occurred.

See *Ry. Co. vs. P.*, 217 Ill. 165, referred to under Sec. 49.

State Board of Equalization and county clerk, in assessment and distribution of railroad taxes, are controlled by Secs. 42, 43, 44, 109. The listing of property for assessment as "railroad track" and "rolling stock" within the road district, as valued by State Board of Equalization for the proper year, is a sufficiently certain description. *W., St. L. and P. R. Co. vs. P.*, 137—181.

Sec. 41 does not require the length of track in each road district to be shown. *O. & M. R. Co. vs. P.*, 119—207.

Any description of land by which the property may be identified by a competent surveyor with reasonable certainty, either with or without the aid of extrinsic evidence, will be sufficient for the purpose of taxation. *Cairo, etc., R. Co. vs. Mathews*, 152—153 (1894); *P. vs. Wabash R. Co.*, 267—30.

Failure of railroad company to file schedule with county clerk does not authorize local assessor to assess "railroad track." *People vs. Wiggings Ferry Co.*, 257—452.

"Railroad track" — Description of.] Section 42. Such right of way including the superstructures of main, side or second track and turnouts, and the station and improvements of the railroad company on such right of way, shall be held to be real estate for the purposes of taxation, and denominated "railroad track," and shall be so listed and valued; and shall be described in the assessment thereof as a strip of land extending on each side of such railroad track, and embracing the same, together with all the stations and improvements thereon, commencing at a point where such railroad track crosses the boundary line in entering the county, city, town or village, and extending to the point where such track crosses the boundary line leaving such county, city, town or village, or to the point of termination in the same, as the case may be, containing acres, more or less (inserting name of county, township, city, town or village boundary line of same, and number of acres, and length in feet), and when advertised or sold for taxes, no other description shall be necessary.

Tracks of electric railroad laid in street by permission of municipality and a lot adjoining street occupied by power plant are a part of right of way which is assessable by State Board. *People vs. Terre Haute & W. R. Co.*, 256—591.

Railroad property described merely as "Chicago, Burlington & Quincy Railroad Company—Railroad tracks composed of right of way, main track, second main track and turnout, and station and improvements of said railway company on such right of way." is too indefinite. *People vs. Chicago, B. & Q. R. Co.*, 256—353.

It is not necessary to strictly follow form for describing railroad property, yet property must be described so that it can be located by a competent surveyor. *People vs. Chicago, B. & Q. R. Co.*, 256—353.

Judgment for county tax is sufficient if the description is in the language of section 42 and clear enough to identify track of company in the county. *People vs. Wabash R. Co.*, 271—327.

A railroad bridge used primarily for railroad track, but which has wooden supports and roadway for wagons in which toll is charged, is taxable as a unit by the Board of Equalization and not by the county board, as a tax by the latter would amount to a tax on the franchise. *People vs. Ry. Co.*, 225—593.

What is included in "track":

The use of land adjoining a railroad right of way for a reservoir for water with which to fill locomotives, is "railroad track," and properly assessable by the State Board of Equalization. *R. R. Co. vs. People*, 218—463.

An embankment, elevated tracks, viaduct and bridge approach, all upon the right of way of the company, and used by the company as its right of way, is "railroad track" under the revenue law and taxable by the State Board of Equalization. *People vs. R. R. Co.*, 215—177.

A bridge owned by a railroad company and used by it as part of its main track and for a toll bridge, is "railroad track" within the meaning of Sec. 42 of Revenue Act, at least to the extent that used as right of way, and as such is properly assessable only by the State Board of Equalization. Therefore, a tax by the local assessor on the whole bridge was involved, and the Act for assessing bridges over a navigable stream forming the boundary line between this State and other States does not apply. *People vs. A., T. & S. F. Ry. Co.*, 206—252.

"Railroad track" within the meaning of that term in the Revenue Act, as it concerns the Board of Equalization, includes all used by the railroad for right of way purposes. Under the law there are no divisions or classifications to be made by the board, of "railroad track," such as "railroad track" other than main track. *People vs. Board of Equalization*, 205—296; *Chicago, etc., R. R. vs. Miller*, 72—144; *R. R. Co. vs. Paddock*, 75—616; *Cairo, etc., R. R. Co. vs. Mathews*, 152—153; *Ohio, etc., R. Co. vs. Weber*, 96—443.

Land adjoining the right of way, surrounded by a fence, with barns, sheep yards, sheep pens, an elevator, water tank, electric light plant, and other appliances necessary for yarding and feeding sheep, situated thereon, with a stub track about five hundred feet long on it, and shut off from the main track by a gate when not in use is not "railroad track" within meaning of this Act. That is applied only to property used as a way for the road, and such additional ground as may be used for the convenience of the road but not as part of its "way." *Ry. Co. vs. People*, 195—184.

Land held and used as a right of way by a railroad company, including the superstructure thereon, is a railroad track, and properly assessable only by the State Board of Equalization, even though the railroad company is a tenant by sufferance, or has a lease and title to land is owned by another corporation or individual. *R. Co. v. Grant*, 167—489; *P. vs. Ry. Co.*, 248—532; *P. vs. Ferry Co.*, 257—452.

Under this section railroad track is real property. *W., St. L. and P. R. Co. vs. P.*, 137—181 (1891).

Railroad track includes stations on right of way. *C., B. and Q. R. Co. vs. P.*, 136—660 (1891).

Strip of land one hundred feet wide and one thousand four hundred and seventy-two feet in length, adjoining the main track, with sidetrack thereon, and containing a stone quarry used for purpose of procuring ballast for

railroad, is "track," and not proper to be assessed by local assessor, but should be assessed by State Board of Equalization. *C. and A. R. Co. vs. P.*, 129—571.

The fixed and stationary machinery attached to the railway shops constitutes a part of the machine shops, and should appear in the return made to the Auditor of machine shops situated on the right of way, and in the assessment of machine shops made by the State Board of Equalization, and is not assessable by the local assessor. *P., D. and E. R. Co. vs. Goar*, 118—134.

Railway bridge, owned by railroad company, across a boundary stream of the State, used solely for railway track, is "track," and not assessable by town or county assessors. Act of 1873, Sec. 354, on bridges on border of State, does not affect this. That Act applies to bridges owned by bridge companies. *Anderson vs. C., B. and Q. R. Co.*, 117—26.

Property held for right of way is to be listed as "track," though the road has not been actually constructed thereon. *P. vs. Chicago and W. I. R. Co.*, 116—181.

Must be appropriated to purposes of right of way, to be railroad track. *Chicago, etc., R. Co. vs. P.*, 98—350.

This section does not require acres to be stated. *O. & M. R. Co. vs. P.*, 119—207.

Under former statute, the valuation of right of way was to include value of improvements in addition to value of land as land. *Chicago, etc., R. Co. vs. Lee County*, 44—248.

It is presumed that the State board, in making assessment under Sec. 109, followed the description given in schedule provided by this section. *W., St. L. and P. R. Co. vs. P.*, 137—181 (1891).

How "railroad track" listed and assessed.] Section 43. The value of the "railroad track" shall be listed and taxed in the several counties, towns, villages, districts and cities, in the proportion that the length of the main track in such county, town, village, district or city bears to the whole length of the road in this state, except the value of the side or second track, and all turnouts, and all station houses, depots, machine shops, or other buildings belonging to the road, which shall be taxed in the county, town, village, district or city in which the same are located.

It is sufficient for the county clerk to distribute the valuation of "railroad track" in each of the towns. *O. & M. R. Co. vs. P.*, 119—207.

Under old law, not necessary to give improvements on railroad property separately. *C. and A. R. Co. vs. Livingston Co.*, 68—458.

"Rolling stock" — Schedule.] Section 44. The movable property belonging to a railroad company shall be held to be personal property, and denominated, for the purpose of taxation, "rolling stock." Every person, company or corporation owning, constructing or operating a railroad in this state, shall, in the month of May, annually, return a list or schedule, which shall contain a correct detailed inventory of all the rolling stock belonging to such company,

and which shall distinctly set forth the number of locomotives of all classes, passenger cars of all classes, sleeping and dining cars, express cars, baggage cars, horse cars, cattle cars, coal cars, platform cars, wrecking cars, pay cars, hand cars, and all other kinds of cars. See Sections 7-9, 53 Revenue Act of 1898, post.

Railway cars leased by owner to transportation companies to be used in other States cannot be taxed in the State of owner's domicile, but each State in which the cars are used but not permanently located may levy a tax based on average number of cars in the State during taxing period. *Keith Equip. Co. vs. Board of Review*, 283—244.

Power of a state to tax instrumentalities of interstate commerce which move both within and without its jurisdiction. *Union Tank Line Co. vs. Wright*, 249 U. S. 275.

Rolling stock embraces movable property belonging to the corporation, such as is taken from one part of the line to another. *Ohio, etc., R. Co. vs. Weber*, 96—443.

Company using Pullman palace cars, belonging to another company, is liable for taxes thereon. *Kennedy vs. St. Louis, etc., R. Co.*, 62—395.

Rolling stock was realty, under decisions of this State, prior to adoption of Constitution of 1870. See Art. 11, Sec. 10, thereof. *Palmer vs. Forbes*, 23—301, at 312; *Hunt vs. Bullock*, 23—320; *Titus vs. Mabey*, 25—257; *Titus vs. Ginheimer*, 27—462; *Mich. Central R. Co. vs. Chicago, etc., R. Co.*, 1 App. 399.

How "rolling stock" listed and taxed.] Section 45. The rolling stock shall be listed and taxed in the several counties, towns, villages, districts and cities, in the proportion that the length of the main track used or operated in such county, town, village, district or city bears to the whole length of the road used or operated by such person, company or corporation, whether owned or leased by him or them in whole or in part. Said list or schedule shall set forth the number of miles of main track on which said rolling stock is used in the state of Illinois, and the number of miles of main track on which said rolling stock is used elsewhere.

Stock of leased road should be distributed among the counties where its lines are operated. *Huck vs. C. and A. R. Co.*, 86—352.

That distribution of rolling stock and capital stock between counties is merely ministerial service and may be made by clerk of Board of Equalization, and not by board itself. *Wilson vs. Weber*, 96—454.

The proper way to fix proportion of capital stock and rolling stock of interstate railway company which should be taxed in this State, is to figure the proportion of main track in this State to total main track. *Ohio, etc., R. Co. vs. Weber*, 96—443.

In assessing rolling stock of Illinois Central Railroad Company for State tax provided for in its charter, the Auditor cannot assess entire rolling stock of such company but only such portion thereof as is fairly assessable to the charter lines. *People vs. Ry. Co.*, 273-220.

Personalty and real estate other than "rolling stock" and "railroad track," where listed.] Section 46. The tools and materials for repairs, and all other personal property of any railroad except "rolling stock," shall be listed and assessed in the county, town, village, district or city wherever the same may be on the first day of May. All real estate, including the stations and other buildings and structures thereon, other than that denominated "railroad tracks," belonging to any railroad, shall be listed as lands or lots, as the case may be, in the county, town, village, district or city where the same are located.

The company is not estopped to set up a mistake in classification made by its manager, which is palpable to the local assessor; thus where all the right of way of a railway company was intended to be embraced within the return made, if the correct number of acres was not stated, that would not justify the local assessor in assessing any portion of the right of way. *P., D. and E. R. Co., vs. Goar*, 118—134.

Where the railroad company has omitted lands from schedule A, the presumption is that such land was returned as real estate, and company is estopped to object to a local tax by showing that it should be treated as track. *I. and St. L. R. Co. vs. P.*, 130—62.

A railroad company is bound by its statement of what is "railroad track" and what is property, other than "railroad track," and the local assessor is to assess according to this statement, and is not bound to take notice of a mistake made by the company in returning the land. *Ry. Co. vs. People*, 156—373.

Lots purchased and rented to tenants for use for other than railroad purposes are not part of the railroad track, notwithstanding they are intended to be used for railroad purposes in the future. *C., B. and Q. R. Co. vs. P.*, 136—660 (1891).

Semble, it is the duty of local assessor, as to railroad real estate, to assess real estate of railway company other than "track," which must be assessed by State Board of Equalization. *C. and A. R. Co. vs. P.*, 129—571.

This section contemplates within its provision station buildings not on right of way. *C., B. and Q. R. Co. vs. P.*, 136—660 (1891).

The local assessor should so describe part assessable by him as not to include railroad track, and if he lists lot belonging to railway company, any part of which is "railroad track" assessed by State board, it will be double taxation. *Chicago, etc., R. Co. vs. P.*, 99—464.

"Personal property other than rolling stock" embraces tools, materials for repairs, and all other property which in ordinary use is not taken from one part of line to another. This, with lands "not part of railroad track," constitutes local property. *Ohio, etc., R. Co. vs. Weber*, 96—443.

Lots owned by railroad company and occupied by stock yards outside of right of way are properly assessed by local assessor as property other than railroad track. *People vs. R. Co.*, 247—360.

How such other personal and real property to be assessed.] Section 47. The county clerk shall return to the assessor of the town or district, as the case may require, a copy of the schedule or

list of the real estate (other than "railroad track,") and of the personal property (except "rolling stock,") pertaining to the railroad; and such real and personal property shall be assessed by the assessor. Such property shall be treated in all respects in regard to assessment and equalization, the same as other similar property belonging to individuals, except that it shall be treated as property belonging to railroads, under the terms "lands," "lots," and "personal property." See Section 7-9, 53 Revenue Act of 1898, post.

Railroad returns to auditor.] Section 48. At the same time that the lists or schedules are hereinbefore required to be returned to the county clerks, the person, company or corporation running, operating or constructing any railroad in this state, shall return to the auditor of public accounts (Tax Commission) sworn statements or schedules, as follows:

First—Of the property denominated "railroad track," giving the length of the main and side or second tracks and turn outs, and showing the proportions in each county, and the total in the state.

Second—The "rolling stock," giving the length of the main track in each county, the total in this state, and the entire length of the road.

Third—Showing the number of ties in track per mile, the weight of iron or steel per yard, used in main and side tracks; what joints or chairs are used in track, the ballasting of road, whether gravel or dirt, the number and quality of buildings or other structures on "railroad track," the length of time iron in track has been used, and the length of time the road has been built.

Fourth—A statement of schedule showing:

1. The amount of capital stock authorized, and the number of shares into which such capital stock is divided.
2. The amount of capital stock paid up.
3. The market value, or if no market value, then the actual value of the shares of stock.
4. The total amount of all indebtedness, except for current expenses for operating the road.
5. The total listed valuation of all its tangible property in this state.

Such schedule shall be made in conformity to such instructions and forms as may be prescribed by the auditor of public accounts (Tax Commission).

Under Sec. 27 of Tax Commission law whenever in any law relating to assessment of property for taxation any abstracts or schedules are required to

be filed with, or duty imposed upon, or vested in either the Auditor of Public Accounts or the State Board of Equalization such abstracts or schedules shall be filed with, such duty and power shall be discharged by the Tax Commission.

Neglect to return.] Section 49. If any person, company or corporation, owning, operating or constructing any railroad, shall neglect to return to the county clerks the statements or schedules required to be returned to them, the property so to be returned and assessed by the assessor shall be listed and assessed as other property. In case of failure to make returns to the auditor, as hereinbefore provided, the auditor, with the assistance of the county clerks and assessors, when he shall require such assistance, shall ascertain the necessary facts and lay the same before the state board of equalization. In case of failure to make said statements, either to the county clerk or auditor, such corporation, company or person shall forfeit, as a penalty, not less than \$1,000 nor more than \$10,000 for each offense, to be recovered in any proper form of action, in the name of the People of the State of Illinois, and paid into the state treasury.

The statement required filed with county clerk, for failure to file which the penalty of \$1,000 is imposed, was required to be filed in the month of May, 1873, by all roads then in existence, and thereafter by railroads subsequently organized and constructed in the month of May next after the location of the new road. Lists and schedules are to be filed annually thereafter. Once such statement has been made, the only duty thereafter devolving on the company, as to property of which a detailed description is given in the statement, and to which the statute gives the name "railroad track," is to report the value of the property describing it as "railroad track." The penalty has to do with filing the statement covering property afterward to be called "railroad track." This penal provision of \$1,000 is not out of proportion to the offense and is constitutional under Sec. 11, Art. 2, of Constitution. *Ry. Co. vs. People*, 217—164.

Schedules — Tax Commission to assess railroad property.] Section 50. The auditor shall, annually, on the meeting of the state board of equalization, lay before said board the statements and schedules herein required to be returned to him; and said board shall assess such property in the manner hereinafter provided.

See cases given under Sec. 42 *supra*.

Under Sees. 26 and 27 of Tax Commission law (laws 1919, p. 724), all the powers and duties conferred upon the State Board of Equalization and upon the Auditor of Public Accounts for assessment of property for taxation are transferred to and to be exercised by the Tax Commission, and whenever, in any law relating to the assessment of property for taxation schedules or other papers are required to be filed with, or duty is imposed upon or other power vested in either the Auditor of Public Accounts or State Board of Equalization, such schedule, etc., shall be filed, with such duty and power shall be discharged by the State Tax Commission.

All real estate denominated "railroad track" is assessable by the State Board of Equalization and all that denominated other than railroad track is assessable by the local assessor. The same real estate may not be assessed by both, however, but the nature of the real estate is not conclusively defined by its designation in the return of the railroad company. The local assessors should assess what is not railroad track and so describe it that the portion assessed by them can be identified. If they assess railroad track, the assessment is void. *I. C. R. R. Co. vs. Cavins*, 238—380; *P. vs. Ry. Co.*, 248—532, 539.

An assessment of property used as a railroad track by the local township assessor is void, as the exclusive power to assess railroad track and rolling stock of railways is conferred upon the State Board of Equalization. *P., D. and E. R. Co. vs. Goar*, 118—134.

The local assessors are to assess all railway property except rolling stock, track and capital stock, which are to be assessed by State board. *C., B. and Q. R. Co. vs. Siders*, 88—320; *Chicago, etc., R. Co., vs. Paddock*, 75—616.

No road can complain of the omission from assessment, by State Board of Equalization of certain improvements, for all roads. *C., B. and Q. R. Co. vs. Siders*, 88—320.

Local assessor has no power to assess right of way of railroad company, as such power is in State Board of Equalization. *People vs. Wiggins Ferry Co.*, 257—452.

Railroad tax book—Extending and collecting tax.] Section 51. The county clerk shall procure, at the expense of the county, a record book, properly ruled and headed, in which to enter the railroad property of all kinds, as listed for taxation, and shall enter the valuations as assessed, corrected and equalized, in the manner provided by this act; and against such assessed, corrected or equalized valuation, as the case may require, the county clerk shall extend all the taxes thereon for which said property is liable. And at the proper time fixed by this act for delivering tax books to the county collector, the clerk shall attach a warrant, under his seal of office, and deliver said book to the county collector, upon which the said county collector is hereby required to collect the taxes there charged against railroad property, and pay over and account for the same in the manner provided in other cases. Said book shall be returned by the collector and be filed in the office of the county clerk for future use.

If the railroad company returns property as "railroad track" when it should have been returned as "real estate other than denominated railroad track," it is the duty of the local assessor to list and assess such real estate as omitted property. *Ry. Co. vs. People*, 195—184.

Warrant is indispensable part of tax books and its absence was ground for enjoining sale for taxes. *Ream vs. Stone*, 102—359.

Description of platted land.] Section 52. When any railroad company shall make or record a plat of any contiguous lots or par-

cels of land belonging to it, the same may be described as designated on such plat.

Telegraph Companies — Return — Schedule.] Section 53. Any person, company or corporation, using or operating a telegraph line in this state, shall, annually, in the month of May, return to the auditor of public accounts (Tax Commission) a schedule or statement, as follows:

First—The amount of capital stock authorized, and the number of shares into which such capital stock is divided.

Second—The amount of capital stock paid up.

Third—The market value, or if no market value, then the actual value of the shares of stock.

Fourth—The total amount of all indebtedness, except current expenses, for operating the line.

Fifth—The length of the line operated in each county, and the total in the state.

Sixth—The total assessed valuation of all its tangible property in this state.

Such schedule shall be made in conformity to such instructions and forms as may be prescribed by the auditor of public accounts (Tax Commission), and with reference to amounts and values on the first day of May of the year for which the return is made.

Powers and duties conferred on Auditor of Public Accounts to be exercised by Tax Commission. See Note, Sec. 50, *supra*.

Tax Commission to assess — How tax collected.] Section 54. The auditor shall annually, on the meeting of the state board of equalization, lay before said board the statement or schedule herein required to be returned to him; and said board shall assess the capital stock of such telegraph company, in the manner hereinafter provided. The tax charged on the capital stock of telegraph companies shall be placed in the hands of county collectors, in a book provided for that purpose, the same as is required for railroad property, and may be included in same book with railroad property.

Powers and duties conferred on State Board of Equalization and Auditor of Public Accounts to be exercised by Tax Commission. See Note, under Sec. 50, *supra*.

Office furniture, etc., how listed and assessed.] Section 55. The office furniture and other personal property of telegraph companies shall be listed and assessed in the county, town, district, village or city where the same is used or kept.

Penalty for false schedules, etc.] Section 56. If any person or corporation shall give a false or fraudulent list, schedule or statement, required by this act, or shall fail or refuse to deliver to the

assessor, when called on for that purpose, a list of the taxable personal property which he is required to list under this act, he or it shall be liable to a penalty of not less than \$10 nor more than \$2,000, to be recovered in any proper form of action, in the name of the People of the State of Illinois, on the complaint of any person. Such fine, when collected, to be paid into the county treasury.

Perjury.] Section 57. Whoever shall willfully make a false list, schedule or statement, under oath, shall, in addition to the penalty provided in the preceding section, be liable as in the case of perjury.

Real property — As of what time listed — Who liable for tax — Listed May 1st.] Section 58. All real property in this state, subject to taxation under this act, including real estate becoming taxable for the first time, shall be listed to the owners thereof, by such owners, their agents, county clerks or assessors, or the county board, and assessed for the year one thousand eight hundred and eighty-one, and yearly thereafter, with reference to the amount owned on the first day of May in each year, including all property purchased on that day: Provided, that no assessment of real property shall be considered as illegal by reason of the same not being listed or assessed in the name of the owners thereof. [As amended by act approved June 2, 1881. In force July 1, 1881. L. 1881, p. 133.] See Sections 7-9, 53 Revenue Act of 1898, post.

Disconnected tracts of land cannot be listed together, but they should be listed separately; however, listing in smallest legal subdivisions is not required. *Spellman vs. Curtenius*, 12—409.

The tax list need not give name of property owner. *Zeigler vs. P.*, 164—532.

Owner on 1st May liable.] Section 59. The owner of property on the first day of May in any year, shall be liable for the taxes of that year. The purchaser of property on the first day of May shall be considered as the owner on that day. See Sections 7-9, 53 Revenue Act of 1898, post.

Leasehold interest in exempted lands.] Section 60. When real estate, which is exempt from taxation, is leased to another whose property is not exempt, and the leasing of which does not make the real estate taxable, the leasehold estate and the appurtenances shall be listed as the property of the lessee thereof, or his assignee, as real estate.

Under this section, the leasehold interest the Illinois Central Railroad conveyed by lease became taxable as real estate in the possession of the lessee. *People vs. Salt Co.*, 233—223.

When certain lands become taxable.] Section 61. Government lands entered or located on or prior to the first day of May, shall be taxable for that year, and annually thereafter. School lands and

lots sold shall be taxable in like manner as government lands. Lands and lots sold by the trustees of the Illinois and Michigan Canal shall be taxable from and after the time the full payment therefor is made. Illinois Central railroad lands and lots shall be taxable from and after the time the last payment becomes due. Swamp lands and lots shall become taxable whenever the county sells, conveys, or agrees to convey its title: Provided, that canal, Illinois Central railroad and swamp lands and lots shall be, in other respects, governed, as to the time of becoming taxable, the same as government lands. See Sections 7-9, 53 Revenue Act of 1898, post.

Subdividing — Owner to plat — Record — Description — Unpaid taxes or special assessments.] Section 62. In all cases where any tract or lot of land is divided in parcels, so that it cannot be described without describing it by metes and bounds, it shall be the duty of the owner to cause such land to be surveyed and platted into lots. Such plat shall be certified and recorded. The description of real estate, in accordance with the number and description set forth in the plat, aforesaid, shall be deemed a good and valid description of the lot or parcel of land so described: Provided, that hereafter no new subdivision of any tract of land, lots or blocks shall be approved by a city, town, incorporated town or village officer, unless all redeemable sales for unpaid taxes or special assessments have been redeemed and all forfeited taxes or special assessments have been paid as required by law and before any recorder of deeds, files and records or any city, town, incorporated town or village officer in charge of such matters approves any plat or new subdivision, vacation, or dedication submitted, he shall require that a statement from the county clerk be endorsed upon any such proposed plat of new subdivision, vacation or dedication to the effect that the county clerk finds no reasonable tax sales or unpaid forfeited taxes against any of the real estate included in such plat. [As amended by act approved June 29, 1915. L. 1915, p. 575.

The proviso of 1915 to Sec. 62 does not apply to plats submitted for approval before the proviso took effect. *People vs. Massien*, 279—312.

Owner neglecting — County clerk to cause plat, etc.] Section 63. If the owner of any such tract or lot shall refuse or neglect to cause such survey to be made within thirty (30) days after having been notified by the county clerk, by publication of a notice in a newspaper in the county, having general circulation, at least three times, said clerk shall cause such survey to be made and recorded; and the expenses of the publication of such notice and of making such survey shall be added to the tax levied on such real property,

and when collected, shall be paid, on demand to the persons to whom it is due. [As amended by act approved May^o 31, 1879. In force July 1, 1879. L. 1879, p. 255.]

Plat authorized by Secs. 62 and 63 not admissible in evidence where the only issue was title to the premises in controversy. *Bald vs. Nuernberger*, 274—125.

If a property owner after notice neglects and refuses to plat his land for taxation, lands may be platted by county clerk under Sec. 62 of Revenue Law. *People vs. R. Co.*, 252—395, 397.

To be valid the plat must be recorded. *P. vs. Clifford*, 166—168.

Application for taxes against land, described by reference to plat filed for record without authority, will be refused, as where assessor, and not the owner, subdivided it. *P. vs. Alton, etc., R. Co.*, 96—369.

Assessment upon subdivision of land unauthorized by owner is void, because that would change the description of the land, so that an owner applying at the collector's office to pay taxes on his land would find none on the books answering his description of it. *Gage vs. Rumsey*, 73—473.

Plat made by county clerk must be certified and recorded, just as well as one made by the owner, under Sec. 62. *Ely vs. Brown*, 183—602.

Description of property assessed according to assessor's plat made under Act of 1853, but not made by county surveyor, is insufficient to sustain judgment of sale. *Upton vs. P.*, 176—633.

Under prior similar statute (L. 1853, p. 3), held, description of lots in plats, not certified to by county surveyor, was not sufficient for taxation. *P. vs. Reat*, 107—581.

Division of back taxes and extending the same on lots and blocks by the county clerk is improper. Where a tract on which there are unpaid back taxes is subdivided, it is not proper for the county clerk to divide the back taxes and extend them on the lots and blocks. *McCartney vs. Morris*, 137—481 (1890).

How listed as between counties.] Section 64. Any tract of land not exceeding one-sixteenth of a section, shall be listed in the county where the greater part thereof is situated. When any such tract of land shall be situated equally in two counties, the auditor (Tax Commission) shall determine in which county it shall be listed. If there be several tracts similarly situated, the auditor (Tax Commission) shall apportion them equally between the counties as nearly as practicable. County clerks may have the actual contents of such tracts lying in their respective counties, surveyed, platted and recorded, in the manner provided for in other cases.

Powers and duties conferred on Auditor of Public Accounts to be exercised by Tax Commission. See Note, Sec. 50, *supra*.

How listed as between towns.] Section 65. The foregoing rule shall apply to lands lying in different towns: Provided, the county clerk shall act in said cases instead of the auditor (Tax Commission).

Powers and duties conferred on Auditor of Public Accounts to be exercised by Tax Commission. See Note, Sec. 50, *supra*.

Making and delivery of assessment books and blanks — How property to be listed — What books to contain.] Section 66. The county clerk shall make up for the several towns or districts in his county, in books to be provided for that purpose, the lists of lands and lots to be assessed for taxes. When a whole section, half section, quarter section, or half-quarter section, belongs to one owner, it shall, at the request of the owner or his agent, be listed as one tract, and when all lots in the same block belong to one owner, they shall, at the request of the owner or his agent, be listed as a block. When several adjoining lots in the same block belong to the same owner, they shall, at the request of the owner or his agent, be included in one description: Provided, that when any tract or parcel of real estate is situated in more than one town, or in more than one school, road or other district, or is situated and assessed, in any drainage district, for drainage purposes, the portion thereof in each town or district shall be listed separately; and the lands in any drainage district shall be listed corresponding, as near as may be, to the respective subdivisions and descriptions in the latest assessment roll of such drainage district. Said clerk shall enter in the proper column, opposite the respective tracts or lots, the name of the owner thereof, so far as he shall be able to ascertain the same. Said books shall contain columns in which may be shown the number of acres or lots improved, and the value thereof; the number of acres or lots not improved, and the value thereof; the total value; and such other columns as may be required. [As amended by act approved and in force June 26, 1885.] See Section 10 Revenue Act of 1898, *post*.

Refusal to list lots as one block is cured by Sec. 191, *infra*, and if tax-payer is injured his remedy is against clerk for refusal (see Sec. 287 and 288). *Thatcher vs. P.*, 79—597.

The want of a dollar mark is no defect to the assessment roll or to any matter or thing prior to the application of the collector for a judgment against the delinquent lands. *Elston vs. Kennicott*, 46—187, 203; *Hill vs. Figley*, 25—156.

Books to be by townships — When separate books for cities etc.] Section 67. The books for the assessment of property in counties not under township organization, shall be made up by congressional townships, but parts or fractional townships, less than full townships, may be added to full townships, at the discretion of the county board. In counties under township organization, said books shall be made to correspond with the organized townships. Separate books shall be made for the assessment of property and the

collection of all taxes and special assessments thereon, within the corporate limits of cities, towns and villages, if ordered by the county board. See Section 10 Revenue Act of 1898, post.

Lists compared.] Section 68. The county clerk shall cause such lists to be carefully compared with the list of taxable real property on file in his office.

Books to be ready May 1st.] Section 69. The county clerk shall cause such assessment books, and all blanks necessary to be used by the assessor in the assessment of real and personal property, to be in readiness for delivery to the assessors, on or before the first day of May in each year. [As amended by act approved June 2, 1881. In force July 1, 1881. L. 1881, p. 133.] See Section 10 Revenue Act of 1898, post.

Assessor to call for books.] Section 70. It shall be the duty of each county, town or district assessor to call on the county clerk on or before the first day of May in each year, and receive the necessary books and blanks for the assessment of property, and the failure of any assessor so to do, shall be deemed sufficient cause to declare his office vacant, and for the appointment of a successor. [As amended by act approved June 2, 1881, in force July 1, 1881. L. 1881, p. 133.] See Section 11 Revenue Act of 1898, post.

Other lands.] Section 71. If, after the delivery of such books to the assessor in any year, the clerk shall receive an abstract showing the entry of any lands or lots not contained in such books, it shall be his duty to furnish a list of the same to the proper assessor within five days after such abstract is received.

Appointment of assessors and deputy assessors — In counties not under township organization.] Section 72. Until provision is made by law for the election of the county assessor in counties not under township organization, the county board, in said counties, shall, annually, appoint some suitable and competent person as county assessor, and the person so appointed shall hold his office for one year, subject, however, to all the fines, penalties, and removal from office, provided for in this act. A vacancy from any cause, in the office of assessor, shall be filled by appointment by said board. [By act approved May 2, 1873, the treasurer is made ex-officio collector. See "Elections," Ch. 46, Sec. 22. See Sections 1 and 22 Revenue Act of 1898, post.

Deputies.] Section 73. If any assessor, for any cause whatever, shall be unable to perform the duties required of him, within the time designated by law, he may, by and with the advice and consent of the chairman of the county board, or board of town auditors,

as the case may require, appoint one or more suitable persons to act as deputies to assist him in making the assessment, and may designate the district, or portion of the township, county, city, village or town in which such deputy or deputies are authorized to list and assess property. Such deputy assessors shall make their returns to the assessor. See Sections 1 and 22 Revenue Act of 1898, post.

Oath and duties of assessors — Assessment of real and personal property — Oath.] Section 74. Every assessor or deputy assessor, before entering upon the duties of his office, shall take and subscribe the oath required by the constitution. See Section 4 Revenue Act of 1898, post.

(For election and qualification of assessors in counties of 125,000 inhabitants see Revenue Act of 1898, Secs. 3 and 4, post.)

Failure to take oath — Vacancy.] Section 75. If any assessor shall fail to take the oath required by this act, his office shall become vacant; and in such case, or in case the office of assessor is vacant for any cause, the county board or town board, as the case may be, shall fill the vacancy by the appointment of some suitable person, who shall qualify and discharge the duties of such assessor till the office is otherwise filled, as required by law. See Section 4 Revenue Law of 1898, post.

Defect in administration of oath in assessor no ground for refusing judgment for delinquent taxes. *Sullivan vs. State*, 66—75.

De facto assessors' acts are just as valid as de jure officers in collateral proceeding. *Sullivan vs. State*, 66—75.

How and when real estate assessed.] Section 76. Assessors shall, between the first day of May and the first day of July of each year, actually view and determine, as nearly as practicable, the fair cash value of each tract or lot of land listed for taxation, and set down in proper columns, in the book furnished him, the value of each tract or lot improved, the value of each tract or lot not improved, and the total value. He shall also set down, in separate columns, the number of acres in wheat, corn, oats, meadow, and other field products, in inclosed pastures, orchards and woodlands, whether inclosed or not, in that year. [As amended by act approved June 2, 1881, in force July 1, 1881. L. 1881, p. 134.] See Sections 12-14 Revenue Act of 1898, post.

The assessment invalid unless each tract is assessed separately; citing Constitution of 1870, Art. 9, Sec. 1. *Howe vs. P.*, 86—288.

Legal description of tract or lot is intended by this section. *Cram vs. City of Chicago*, 139—265 (1891).

Tract or lot must be each actually viewed and fair cash value determined and entered in a book. *Cram vs. City of Chicago*, 139—265 (1891).

Other lands added.] Section 77. If the assessor finds that any real estate subject to taxation, or special assessment has not been returned to him by the clerk, or if returned, has not been described in the subdivisions, or manner required by section sixty-six of this act, he shall correct the return of the clerk; and shall list and assess such property in the manner required by law. [As amended by act approved and in force June 26, 1885.]

How personal property assessed.] Section 78. The assessor or his deputy shall, also, between the first day of May and July, proceed to take a list of the taxable personal property in his county, town or district, and assess the value thereof in the manner following, to wit: He shall call at the office, place of doing business, or residence of each person required by this act to list property, and list his name, and shall require such person to make a correct statement of his taxable property, in accordance with the provisions of this act; and the person listing the property shall enter a true and correct statement of such property, in the form prescribed by this act, which shall be signed and sworn to, to the extent required by this act, by the person listing the property, and delivered to the assessor; and the assessor shall thereupon assess the value of such property, and enter the same in his books: Provided, if any property is listed or assessed on or after the first day of July, and before the return of the assessor's books, the same shall be as legal and binding as if listed and assessed before that time. See Sections 15-18 Revenue Act of 1898, post.

Where one assessment was made against John York Company and the other against John York, and it was claimed that the name John York Company was entered on the wrong line. the entries in the assessor's books are conclusive unless the schedules are produced, as they are primary evidence as to property assessed. *Loeber vs. Leininger*, 175—489.

When owner, etc., sick or absent.] Section 79. If any person required by this act to list property shall be sick or absent when the assessor calls for a list of his property, the assessor shall leave at the office or usual place of residence or business of such person a written or printed notice, requiring such person to make out and leave at the place named by said assessor, on or before some convenient day named therein, the statement or schedule required by this act. The date of leaving such notice, and the name of the person required to list the property, shall be carefully noted by the assessor in a book to be kept for that purpose.

Examination under oath — Witness.] Section 80. The assessor may examine, on oath, any person whom he may suppose to have knowledge of the amount or value of the personal property which

the person so refusing is required to list. The assessor may take any proper form of action to compel the attendance of a witness.

School district to be designated.] Section 81. It shall be the duty of assessors, when making assessments of personal property, to designate the number of school district or districts in which each person assessed is liable for tax; which designation shall be made by writing the number of the district opposite each assessment, in a column provided for that purpose in the assessment book.

When property in several districts.] Section 82. When the personal property of any person is assessable in several school districts, the amount in each shall be assessed separately, and the name of the owner placed opposite each amount.

When assessor to fix value.] Section 83. In all cases of failure to obtain a statement of personal property, from any cause, it shall be the duty of the assessor to ascertain the amount and value of such property, and assess the same as he believes to be the fair amount and value thereof.

Owner may require list of valuation.] Section 84. The assessor, when requested, shall deliver to the person assessed a copy of the statement of property hereinbefore required, showing the valuations of the assessor of the property so listed; which copy shall be signed by the assessor. See Section 27 Revenue Act of 1898, post.

Assessor to use forms.] Section 85. Assessors, in the execution of their duties, shall use the forms and pursue the instructions which shall, from time to time, be transmitted to them by the auditor (Tax Commission), or that may be furnished to them by the county clerk or other officer, in pursuance of law.

Powers and duties conferred on Auditor of Public Accounts to be exercised by Tax Commission. See Note, Sec. 50, supra.

Review of assessment — Time — Proceedings.] Section 86. In counties under township organization the assessor, clerk and supervisor of the town shall meet on the fourth Monday of June for the purpose of revising the assessment of property in such town. And on the application of any person considering himself aggrieved or who shall complain that the property of another is assessed too low, they shall revise the assessment and correct the same as shall appear to them just. No complaint that another is assessed too low shall be acted upon until the person so assessed or his agent shall be notified in writing of such complaint, if a resident of the county.

Any two of such officers meeting are authorized to act, and they may adjourn from day to day upon notifying those present of the date to which they adjourn until they shall have finished the hearing of all cases presented to them.

Property assessed after the fourth Monday of June, and all other property whereof the owner or his agent has made application to the town board to have the assessment on the same revised as provided by this section, and has given notice in writing to said board that he will appeal from its decision to the county board shall be subject to complaint to the county board and the county board shall revise and correct the assessment upon the same upon application of the owner or his agent, as provided by section 97 of this act, and if it shall appear that the same has been assessed higher in proportion than other lands in the same neighborhood, the county board shall revise and correct the same and make such reduction in said assessment as shall be just and right. [As amended by act approved June 17, 1891. In force July 1, 1891. L. 1891, p. 187.] See Sections 23-44 Revenue Act of 1898, post.

Remedy for excessive assessment is by section above. *Clement vs. P.*, 177—145; *English vs. P.*, 96—566.

Injunction does not lie to restrain collection of alleged excessive tax, etc., where remedy afforded by section above has not been exhausted, but neglect of board to decide a tax-payer's complaint finds a remedy in mandamus. *Kinley Mfg. Co. vs. Kochersperger*, 174—381.

The county board may not reduce an assessment made prior to the fourth Monday of June, except on appeal from the town board of review. *Workingmen's Banking Co. vs. Wolff*, 150—491 (1894).

Majority of board of revisers may reduce an assessment. *State vs. Sullivan* 43—412.

Meeting of town board of review on day appointed by statute may be continued until another day if business is not completed, and business performed at adjourned meeting is not invalid. *St. Louis Bridge Co. vs. P.*, 128—422.

Prior to the amendment of June 17, 1891, except in case of property assessed after the first Monday of June, county boards in counties under township organization had no appellate jurisdiction over the action of township boards of review, and no original jurisdiction to hear complaints of persons aggrieved by the assessment of their property. *Workingmen's Banking Co. vs. Wolff*, 150—491 (1894).

The county board properly refused to take jurisdiction of an appeal from the assessment made by the town board, where there was no satisfactory evidence that an assessment was made by the town board after the fourth Monday of June. *Butternuth vs. St. Louis Bridge Co.*, 123—535.

An owner who omits to make application to the town board of assessors at its regular session, at the appointed time, loses all remedy under the statute for relief against an alleged excessive valuation of its property for taxation, unless assessment made after the fourth Monday in June, when his right is under Sec. 97. *Butternuth vs. St. Louis Bridge Co.*, 123—535.

The board cannot act on a complaint that a third person has been assessed too low until the person assessed or his agent has been notified in writing; but this part of the statute has no application whatever to a case where a

person appears before the board and asks for the correction of an erroneous assessment, in which event no written notice is required. *Camp vs. Simpson*, 118—224.

Notice in writing to owner or agent is essential to valid increase of assessment by township board of review. Tax-payer is safe by tendering original amount in case no notice and may enjoin collection of balance. *Huling vs. Ehrich*, 183—317.

Under laws in force in 1859, a railway company could not appeal to Circuit Court as to assessment by board of supervisors. *O. and M. R. Co. vs. Lawrence County*, 27—50.

Semle, certiorari would lie if board refused to make reduction. *O. and M. R. Co. vs. Lawrence County*, 27—50.

Valuation fixed by action of assessor and Board of Equalization is conclusive and cannot go into equity because of overvaluation. *P. vs. Big Muddy Iron Co.*, 89—116.

Under former statute it was imperative that such meeting for review be held, and its omission was fatal to validity of tax. *Hough vs. Hastings*, 18—312.

In order to increase the assessment, the owner must have had notice. *Darling vs. Gunn*, 50—424.

County board has no power to set aside forfeiture to State. *Madison County vs. Smith*, 95—328.

Record of town clerk best evidence of original meeting and adjournment. *St. Louis Bridge Co. vs. P.*, 128—422.

Notice of meeting.] Section 87. The assessor shall cause at least ten days' previous notice of the time and place of such meeting, to be given by posting notices in at least three public places in such town. See Sections 23-44 Revenue Act of 1898, post.

Failure not to vitiate, except, etc.] Section 88. The failure to give such notice or hold said meeting shall not vitiate such assessment, except as to the excess of valuation or tax thereon shown to be unjustly made or levied.

Return of assessor to county clerk — Assessor to add up columns, etc.] Section 89. The assessor shall add up and note the aggregate of each column in his assessment books of real and personal property; and shall also add in each book, under proper headings, a tabular statement, showing the footings of the several columns upon each page; and shall add up and set down under the respective headings the totals of the several columns. When an assessor returns several assessment books of real or personal property, he shall, in addition to the tabular statements herein required, return a statement in like form, showing the totals of all the books. [As amended by act approved June 2, 1881. In force July 1, 1881. L. 1881, p. 134.]

Return.] Section 90. The assessor shall on or before the first day of July of the year for which the assessment is made, return

his assessment books to the county clerk, verified by his affidavit substantially in the following form:

STATE OF ILLINOIS, }
 County. } ss.

I,, assessor of, do solemnly swear that the book to which this is attached, contains a correct and full list of all the real property [or "personal property" as the case may be,] subject to taxation in, so far as I have been able to ascertain the same; and that the assessed value set down in the proper column opposite the several kinds and descriptions of property is, in each case, the fair cash value of such property, to the best of my knowledge and belief, [where the assessment has been corrected by a town board, "except as corrected by the town board,"] and that the footings of the several columns in said book, and tabular statement returned herewith, are correct, as I verily believe.

[As amended by act approved June 2, 1881. In force July 1, 1881. L. 1881, p. 134.]

Assessment is valid though return was not made at proper time. *Purington vs. P.*, 79—11; *Eurigh vs. P.*, 79—214.

Under Sec. 21 of March 3, 1845, which required return of books to clerk of time designated vitiated the assessment. *Billings vs. Detten*, 15—218. Defect herein can be cured by legislation before tax has been collected. *Cowgill vs. Long*, 15—202.

county commissioners' court, failure of assessor to make return within Assessor must, under Act of February 20, 1839, make returns to clerk of county commissioners' court, on or before May 1. If not so done, assessment invalid and defect in assessment cannot be cured by subsequent legislation. *Marsh vs. Chetsnut*, 14—223.

Schedules and statements delivered, etc.] Section 91. The assessor shall at the same time deliver to the county clerk all the schedules and statements of personal property which shall have been received by him, indorsed with the name of the person whose property is listed, and arranged in alphabetical order; and the clerk shall preserve the same in his office for two years thereafter. See Section 28 Revenue Act of 1898, post.

Where assessor was required by statute to file lists with county clerk, filing with town clerk was unauthorized, and the town clerk cannot recover fees from town for filing such, though done under orders of town officers, and required by town officers so to do. *Town of Charleston vs. McCrory*, 36—456.

Books delivered to town clerk—Review of assessment.] Section 92. The several assessment books shall be filed in the office of the county clerk, and there remain open to the inspection of all persons: Provided, that the county clerk shall, in the month of April, deliver to the town clerks of the several towns in the county, the assessment books of their respective towns for the previous year,

such books to be returned by the town clerks to the county clerk's office before the first of July of the same year. [As amended by act approved June 2, 1881. In force July 1, 1881. L. 1881, p. 134.]

Pay of assessors and deputy assessors — How fixed and paid.]

Section 93. The pay of assessors and deputy assessors shall, from time to time, in counties not under township organization, be determined and fixed by the county board, and in counties under township organization, by the town board of auditors. Such pay shall be for the time necessarily employed in making the assessment, to be paid county assessors and their deputies out of the county treasury, and town assessors and their deputies out of the town treasury. [See "Township Organization," Ch. 139, Sec. 130; "Counties," Ch. 34, Sec. 38; "Fees and Salaries," Ch. 53, Sec. 36. See Section 2 Revenue Act of 1898, post.]

Detailed account of time — Not to be paid until, etc.]

Section 94. Assessors and deputy assessors shall make out their accounts in detail, giving the date of each day which they shall have been employed, which account they shall verify under oath. The assessor shall not be entitled to compensation until he shall have filed the lists, schedules, statements and books appertaining to the assessment of property for such year, in the office of the county clerk—the books to be accurately made and added up. An assessor or deputy assessor shall not be entitled to pay unless he has performed the labor and made return in strict compliance with law.

Duties of clerk on return of assessment books — Clerk to correct errors, etc.] Section 95. The clerk, upon receipt of the assessment books of real property, shall correct all errors of whatsoever kind which he may discover, and add the name of the owner, if known, when the same does not already appear, and the description of all real property which has been omitted by the assessor, and is liable to taxation.

Further corrections.] Section 96. If the assessor has listed and assessed any real property not returned by the auditor (Tax Commission) to the clerk, the clerk shall immediately advise the auditor thereof, who shall ascertain if the same is taxable, and advise the clerk. If taxable, the clerk shall enter the same in the list of taxable property in his office; if not, he shall correct the assessment books.

Powers and duties conferred on Auditor of Public Accounts to be exercised by Tax Commission. See Note, Sec. 50, supra.

Equalization of assessments by the county board — At July' meeting.] Section 97. The county board, at a meeting to be held for the purpose contemplated in this section, on the second Mon-

day in July, annually, after the return of the assessment books,¹ shall—

First—Assess all such lands or lots as have been listed by the county clerk, and not assessed by the assessor. Said board may make such alterations in the descriptions of real property as it shall deem necessary.

Second—On the application of any person considering himself aggrieved, or who shall complain that the property of another is assessed too low, they shall review the assessment and correct the same as shall appear to be just.² No complaint that another is assessed too low shall be acted upon until the person so assessed or his agent shall be notified of such complaint, if a resident of the county.³

Third—To hear and determine the application of any person who is assessed on property claimed to be exempt from taxation.⁴ If the board shall decide that any such property is not liable to taxation, and the question as to the liability of such property to taxation has not been previously determined, as hereinafter provided, the decision of said board shall not be final, unless approved by the auditor of public accounts (Tax Commission); and it shall be the duty of the county clerk, in all such cases, to make out and forward to the auditor a full and complete statement of all the facts in the case. If the auditor is satisfied that such property is not legally liable to taxation, he shall notify the clerk of his approval of the decision of the board, and the said clerk shall correct the assessment accordingly. But if the auditor is satisfied that such property is liable to taxation, he shall advise the clerk of his objection to the decision of the board, and give notice to said clerk that he will apply to the supreme court in either division, specifying at what term thereof, for an order to set aside and reverse the decision of the county board. Upon the receipt of such notice, the clerk shall notify the person making the application aforesaid. It shall be the duty of the auditor to file in the supreme court a certified statement of the facts, certified by the clerk, as aforesaid, together with his objections thereto, and the court shall hear and determine the matter as the right of the case may be. If the board shall decide that property so claimed to be exempt is liable to be taxed, and the party aggrieved shall at the time pray an appeal, a brief statement in the case shall be made by the clerk, and transmitted to the auditor, who shall present the case to the supreme court in like manner as hereinbefore provided.⁵ In either case, the collection of the tax shall not be delayed thereby, but in case the property is decided to be exempt, the tax shall be abated or refunded.

Powers and duties conferred upon Auditor of Public Accounts to be exercised by Tax Commission. See Note, Sec. 50, *supra*.

Fourth—It shall ascertain whether the valuations in one town or district bear just relation to all the towns or districts in the county; and may increase or diminish the aggregate valuation of property in any town or district, by adding or deducting such sum upon the hundred as may be necessary to produce a just relation between all the valuations of property in the county, but shall, in no instance, reduce the aggregate valuation of all the towns or districts, below the aggregate valuation thereof, as made by the assessors: neither shall it increase the aggregate valuation of all the towns or districts, except in such an amount as may be actually necessary and incidental to a proper and just equalization.⁶ It may consider lands, town or city lots, personal property, and railroad property (except "railroad track" and "rolling stock,") separately, and determine a separate rate per cent. of addition or reduction for each of said classes of property, as may be necessary to a just equalization of the assessed value of said classes of property within the respective towns, and of the same between the several towns or districts in the county.⁷ If the county board of any county shall find the aggregate assessment of the county is too high or too low, or is generally so unequal as to render it impracticable to equalize such assessment fairly, they may set aside the assessment of the whole county or of any township or townships therein, and order a new assessment, with instructions to the assessors to increase or diminish the aggregate assessment of such county or township, as the case may be, by such an amount as said board may deem right and just in the premises, and consistent with this act. See Sections 30-44 Revenue Act of 1898, post.

1. Meeting of board:

Under Sec. 97 of revenue law, it is sufficient that the board met on second Monday of July and adjourned from time to time until it finally acted upon and equalized the assessments on September 12. *Halsey vs. P.*, 84—89. Sec. 88 provides that the failure of the board designated in Sec. 86 to meet shall not vitiate the assessment. Therefore failure to meet under Sec. 97 would not vitiate, but even so, such irregularity is cured by Sec. 191. *Beers vs. People*, 83—488.

The action of the county board in raising the amount of an assessment at a special meeting called for that purpose is illegal and the increase invalid. *Nat. Bank of Shawneetown vs. Cook*, 77—622.

2. Shall review assessment:

May compel county board to hear complaints by mandamus. *Kochersperger vs. Larned*, 172—91.

Under Sec. 97 of Revenue Act it is the absolute duty of boards of supervisors in counties under township organization law to entertain the applications of property owners and review the assessments of property assessed for

taxation, but the remedy for their refusal is by mandamus, and not in a court of chancery. *Beidler vs. Kochersperger*, 171—565.

Sec. 97 has for its object to provide for a review of those assessments made after the time when the board designated in Sec. 86 meet, and has not appellate jurisdiction over the latter, so cannot increase assessments of personality made before fourth Monday in June. *Coolbaugh vs. Huck*, 86—600.

The county board may hear complaints through committee. *Beers vs. P.*, 83—488.

Board of supervisors have no authority to raise the assessment of personal property without notice and collection of tax thereon will be enjoined. *McConkey vs. Smith*. 73—313.

Under the old law the action of the county board was final, and not reviewable. *Morgan vs. Smithson*, 9—(4 Gil.), 368.

The aggrieved person should have applied to the board of review for relief under Sec. 97, but after tax assessed and extended, and books placed in hands of collector, the board has no authority to abate taxes. *Madison County vs. Smith*, 95—328.

3. Notice to property owner:

The board cannot increase an assessment without notifying the person to be affected and giving him an opportunity to be heard. *Darling vs. Gunn*, 50—424.

4. Exempt:

The board of supervisors can relieve from taxation only such property as is exempt by law. *P. vs. Ryan*, 138—263 (1891.)

5. Appeal by auditor:

Remedy provided by appeal is not exclusive, but is cumulative and concurrent to former remedy by objection in an appeal from county court to entry of judgment. *Maxwell vs. P.*, 189—556.

Where exempt property has been wrongfully assessed, the owner may apply to supervisors for relief or to chancery, but cannot be heard in chancery after adverse decision by supervisors. *I. C. R. Co. vs. Hodges*, 113—323.

The decision of supervisors on claim of exemption from taxation is not appealable to Circuit Court. *Worthington vs. Pike County*, 23—363.

6. Increase or diminish the aggregate valuation:

The county board may equalize assessment, but it has no power to raise or reduce the assessment above or below the amount returned by the assessors; and if the aggregate assessment is raised above that amount, the collection of the increased taxes on such assessment may be enjoined. *Workingmen's Banking Co. vs. Wolff*, 150—491 (1894).

Any material increase except as actually necessary or incidental to equalization, beyond aggregate valuations of all towns of county, is without authority and void; as where the county Board of Equalization added to assessments of one town, leaving the others unchanged. *Kimball vs. Merchants' Savings Co.*, 89—611.

The board may refer equalization to committee and adopt its report. *Wright vs. P.*, 87—582.

Equalization by arbitrarily fixing value of improved and unimproved lands in each town at uniform valuation for each class is improper. But the clerk acted at peril in disobeying the order of board to extend the tax on their

equalization as could only refuse on ground that violates Constitution. *Mix vs. P.*, 72—241.

In equalizing assessments between towns the same per cent upon all real estate, improved or unimproved, in any township, must be added or deducted. *McKee vs. Supervisors of Champaign County*, 53—477.

Objection to rendition of judgment against certain lands. It is erroneous in equalizing for the board of supervisors of county to add and deduct certain sums per acre, as equalization between townships must be by valuation, not by areas. The old township organization law provided for supervision of the assessment rolls of the several towns and they (the board) may increase or diminish the aggregate valuation of real estate, by adding or deducting such sums upon the "hundred." Held, meant "hundred dollars." *State vs. Allen*, 43—456.

7. Lands, town or city lots, etc., separately:

Under former law the supervisors could not increase aggregate valuation of improved lands in township without at same time increasing valuation of unimproved lands. *P. vs. Nichols*, 49—517.

Unclassified:

Unauthorized change in assessment by supervisors is void, but assessments as made by town assessors remain effective. *State vs. Allen*, 43—456.

Under Act of February 14, 1855, which gave railroad track character of personality, supervisors had power to correct list of property furnished by railway company. *C. and R. I. Co. vs. Supervisors of Bureau County*, 25—580.

County board may complete equalization at subsequent meeting.] Section 1. [97a] Be it enacted by the People of the State of Illinois, represented in the General Assembly, That in any case where the county board of any county shall have failed to complete the equalization of assessments, as returned for any year, at the meeting held on the second Monday in July, or shall have failed to act upon a complaint that another is assessed too low at such meeting, the equalization of such assessment, or action upon such complaint by the county board at any subsequent meeting thereof, is hereby declared legal and valid, and the taxes extended thereon shall be and remain a lien on the property against which they are extended, to the same extent as if such equalization and action upon complaint had been had and taken on the second Monday in July.

Whereas, In some of the counties of this state, it was impossible to equalize all the assessments and act upon the complaints of low assessment at the meeting heretofore designated by law, and therefore an emergency exists to legalize equalizations heretofore made; this act shall take effect and be in force from and after its passage. [An Act to correct irregularities in assessment of property for taxation and in the equalization of assessments for such purposes. Approved and in force May 29, 1877. L. 1877, p. 177.] See Sections 30 to 40 Revenue Law of 1898, post.

Report of assessment by the clerk to the auditor for equalization.] Section 98. On or before the tenth day of July, annually, it shall be the duty of the county clerks, upon the receipt of the assessment books, to make out and transmit to the auditor (Tax Commission) an abstract of the assessment of property, showing the number, value and average value of each kind of enumerated property, as shown by the assessment; the value of each item of unenumerated property, and total value of personal property; the length of main track, the length of side track, and the numbers, values and averages values of each separate item of railroad property; the number of acres, value and average value of improved lands; the number of acres, value and average value of unimproved lands; the total number of acres, total value and average value, per acre, of all lands; the number, value and average value of improved town and city lots; the number, value and average value of unimproved town and city lots; the total number of lots, total value and average value of all lots, and the total value of all property; the number of acres in cultivation of wheat, corn, oats, meadow, and other field products, in enclosed pasture, orchards and woodland, whether enclosed or not in that year. Said abstracts shall be made out on blanks, which it shall be the duty of the auditor to furnish the county clerks for that purpose. The value to be given in said abstracts shall be the assessed valuations, except in the case of railroad property denominated "railroad track" and "rolling stock," the value of which shall be given as returned by the railroad company to the county clerk. The county clerk shall, at the same time, and accompanying said abstract, furnish a detailed statement of the railroad property denominated "railroad track" and "rolling stock," reported by each road located in or through their counties. If there are any roads so located that have not made their reports as required by this act, the clerk shall report the fact, giving the name of such railroad. [As amended by act approved June 2, 1881. In force July 1, 1881. L. 1881, p. 135.] See Section 47 Revenue Act of 1898, post.

Abstracts filed with Auditor of Public Accounts to be filed with Tax Commission, and duties relating thereto to be exercised by Tax Commission. See Note, Sec. 50, *supra*.

When assessments not all in.] Section 99. It shall be the duty of the county clerks, in case of failure of any assessor to make return of assessment within the time specified in this act, to transmit a statement of the assessment in all the towns or districts from which returns have been received, together with a statement of the

amount of taxable property assessed in the defaulting towns or districts for the previous year.

Repealed.] Sections 100 to 116. (Repealed by act approved June 19, 1919. In force July 1, 1919. L. 1919, p. 718.

Secs. 100 to 116, repealed by Sec. 29 of the Tax Commission law and under Secs. 25, 26 and 27 of that act (Laws 1919, p. 724) the records, books, etc., pertaining to the State Board of equalization are transferred to the Tax Commission, all the powers and duties conferred upon the State Board of Equalization and upon the Auditor of Public Accounts for assessment of property for taxation are transferred to and to be exercised by the Tax Commission and whenever, in any law relating to the assessment of property for taxation any abstract, report or other paper or document are required to be filed with, or any duty is imposed upon or power vested in either the Auditor of Public Accounts or the State Board of Equalization, such abstracts, papers, etc., shall be filed with, such duty and power shall be discharged and exercised by the Tax Commission.

Rates of taxation — Computing rates.] Section 117. All rates for taxes, hereinafter provided for, shall be computed by the county clerk on the assessed valuation of property, as equalized and assessed by the state board of equalization, for state purposes, and on the assessed valuation of property, as equalized and assessed by the county board of review and all property assessed by the state board of equalization for other taxes. [As amended by act approved May 10, 1901. In force July 1, 1901. L. 1901, p. 272.] See Section 128 and Juhl Law, post.

Under this section it has been held by the Supreme Court that the equalization of the assessed values of property does not affect the assessed values as fixed by the local assessor or board of review so far as county and other local taxes are concerned, but merely affects the State tax. no charge was made in this section by Tax Commission Law, and the equalization by the Tax Commission merely affects the State taxes. See *R. Co. vs. People*, 223—17; *R. Co. vs. People*, 225—418.

Park taxes, being local taxes, could not be extended on equalized valuation, under law which requires certain taxes specified to be extended upon valuation produced by the equalization and assessments of the State Board of Equalization. See *Parks*, Ch. 105, ¶ 31. *Law vs. P.*, 87—385.

This section does not prescribe a limitation upon taxation. *R. Co. vs. People*, 213—458.

For state purposes — How rate found, etc.] Section 118. The governor, auditor and treasurer shall, annually, on the completion of the assessment and equalization of property, ascertain the rate per cent. required to produce the amount of taxes levied by the General Assembly.

The duty imposed of ascertaining "the rate per cent" is not the levy of a tax, a tax levy being a legislative function. *Morrison vs. Moir Hotel Co.*, 204 A. 436.

State school tax.] Section 119. There shall be annually assessed and collected at the same time and in the same manner, as other state taxes, such rate of tax on the equalized valuation of the property of this state, as is or may be provided by the laws concerning free schools, which tax shall be denominated the "State school tax," and the moneys arising therefrom be distributed in such manner as is or may be provided by the law of this state concerning free schools; and no part of the fund raised by the aforesaid tax shall be diverted to or used for any other purpose than the support and maintenance of free schools in this state. See Juhl Law, post.

State revenues.] Section 120. The auditor shall, annually, compute and certify to the county clerks such separate rates per cent as will produce the net amounts of state taxes authorized to be levied—

First—For revenue purposes, to be designated "Revenue fund."

Second—For interest purposes, to be designated "Interest fund."

Third—For state school purposes, to be designated "State school fund."

Fourth—For such other taxes as may be required by law to be levied by him.

The "Interest fund" tax shall be levied so long as the same may be necessary, and shall be applied to the payment of interest only.

Act requiring State Auditor to fix rate per cent for certain taxes, not unconstitutional as a delegation of legislative power because allowance must be made for uncollectable taxes and for commissions. Levy not void because calling for amount which, if all collected, would exceed amount authorized. *Edwards vs. P.* 88—340.

County Board to Determine Taxes for County Purposes.] Section 121. The county board of the respective counties shall, annually, at the September session, determine the amount of all county taxes to be raised for all purposes. The aggregate amount shall not exceed the rate of fifty cents on the hundred dollars valuation, except for the payment of indebtedness existing at the adoption of the present State constitution, unless authorized by a vote of the people of the county. When for several purposes, the amount for each purpose shall be stated separately: Provided, however, that in all counties where, under any law, the county board is or may be required to pass an annual appropriation bill within the first quarter of the fiscal year, the tax levy above provided for may be made at

any time after such annual appropriation bill shall be in full force and effect. [As amended by act approved June 30, 1919. L. 1919, p. 771.]

Sec. 121, concerning county tax, has no application to a sanitary district. *People (ex rel.) vs. Bowman*, 253—236, 246.

Section must receive a reasonable construction in view of object of which is to afford tax-payers an opportunity to object to an unjust tax. *People (ex rel.) vs. R. Co.*, 266—196.

[This section prior to the amendment of 1909 was worded and construed as follows:

“The county board of the respective counties shall, annually, at the September session,¹ determine the amounts of all taxes to be raised for county purposes,² the aggregate amount of which shall not exceed the rate of seventy-five cents on the one hundred dollars’ valuation of property, except for payment of indebtedness existing at the adoption of the present state constitution, unless authorized by a vote of the people of the county. When for several purposes, the amount for each purpose shall be stated separately.”]

1. September session:

The county board was not required to make the tax levy on the first or any other particular day of its September session, but it might lawfully make it at any time during the session, and had the right to adjourn from time to time until it had completed its business. *Bowyer vs. People*, 220—93.

Cook county board of commissioners should hold its annual meeting on first Monday in September. *R. Co. vs. P.*, 190—25.

Sec. 8 of the old Revenue Law (R. S. 438) provided the county tax should be levied at the March term of court and collected with the State Revenue. A levy at the June term was invalid. *McLaughlin vs. Thompson*, 55—249.

2. County board to determine the amount of taxes to be raised for county purposes:

The Board of County Supervisors may reconsider resolution to levy tax before it had become a record of the board, and before any rights had accrued under it, for duties imposed by it. *Beekwith vs. English*, 51—147.

The collection of a tax will be enjoined where it is levied by less than majority of whole board of supervisors. *Board of Cumberland County vs. Webster*, 53—141.

The board of supervisors may make levy by adopting report of committee. *Mix vs. P.*, 72—241.

3. The amount of each purpose to be stated separately:

A levy must set out separately the amount levied for each purpose and must indicate with sufficient particularity the purpose for which the respective sums are levied. Thus, an item, “election and jurors account, \$3,000” does not set out amount of each purpose, and “Public buildings account and county jail fund account,” do not set out the purpose particularly enough. *People vs. C. V. & C. Ry. Co.*, 243—217.

A levy of \$12,500 for “salary of the officers” sufficiently designated the purpose, it being presumed it was for officers lawfully to be paid out of funds in county arising from general taxes. *People vs. K. & S. W. R. R. Co.*, 237—362.

The items of a county tax levy were as follows: 1. County officers, deputies and clerks, \$20,000. 2. Pauper accounts and poor-master, \$5,500. 3. Almshouse and farm, \$6,500. 4. Courthouse and jail, \$5,000. 5. Jury certificates and witness fees, \$3,000. 6. Printing and stationery, \$6,000. 7. Incidentals, \$1,000. Held, that item 1 was valid and need not have been separated, so also, 5, 6 and 7; that where only a small sum levied for incidentals, it was not necessary to separate. In the others, the items should have been separate and as to 4, it should have been more definite also, as whether for purpose of repairing or maintaining the courthouse, or the jail. *People vs. I. C. R. R. Co.*, 237—324.

The provision that the several purposes of a county tax must be stated separately and definitely, must be given a liberal construction. Where several purposes are grouped under a general designation such as "current expenses," or "county purposes," or "payment of county claims," the levy is void. But a designation that gives the tax-payer full information such as "court expenses" is good, though the board subdivide this purpose into all its various items. There are many items where it would be impracticable for the county board to determine in advance the amount that ought to be levied for each item.

Thus, under "court expenses" various such items appear: Printing, books and stationery, \$800 is sufficient, while salary of county judge, mine inspector, janitor, matron of rest room and turnkey of jail, \$4,000 is not. "Supplies, light, heat and water of courthouse and jail," should have been separated as to courthouse and jail. Miscellaneous purposes is not definite enough. This rule does not apply to town taxes. *People vs. C. V. C. Ry. Co.*, 237—312.

A levy of county taxes "to pay the ordinary expense of said Saline County" is invalid. *People vs. R. R. Co.*, 232—454.

A levy of county tax for unpaid claims; for coal, light and water; for judiciary and boarding prisoners; and for contingent; is bad in that the first and last are too indefinite and the others not set out separately. *People vs. R. R. Co.*, 231—498.

It is the object of this section to give the tax payer an opportunity to know for what purposes taxes are being levied and collected, and to give an opportunity if necessary to prevent an unjust levy. Thus a general item "general fund" is too broad. So also a levy for village or city taxes must specify in detail the several purposes for which tax levied. *People vs. Ry. Co.*, 231—209.

A levy of a county tax for "building purposes and incidental expenses" is not good. *People vs. R. R. Co.*, 231—109; *Same vs. Same*, 231—363.

The purpose for which tax is levied should be stated with reasonable certainty. An item "for payment of county claims (janitor's servise, supplies, repairs, improvements and current expenses), \$12,000," is bad, first, because the amount for each purpose is not stated; second, "county claims" is too indefinite standing alone. *People vs. Ry. Co.*, 224—523.

Where the resolution of the board of supervisors relied on as authorizing the tax was for "county purposes," this was insufficient and the tax levy invalid. *Ry. Co. vs. People*, 214—302.

County tax levy must set out the purpose. *R. R. Co. vs. People*. 214—23; *Barkley vs. Dale*, 213—614; *Ry. Co. vs. People*, 213—558.

A levy of county taxes of "current expenses" and a town levy for "town purposes" are both too indefinite. A statement of the town clerk, attached to the certificate, setting out the purposes of the levy, is to be considered part thereof. *Ry. Co. vs. People*, 213—197.

Fixing the rate per \$100 on property in the county is indirectly fixing the aggregate amount and so sufficient. The resolution must set out the specific purpose. *People vs. Railway Co.*, 213—503.

It is sufficient, in lieu of stating the specific amount of tax in dollars and cents, to set out the fixed percentum upon each \$100. *Ry. Co. vs. People*, 212—518.

County levy for "bridges" includes building new bridges, repairing old ones and building approaches, and levy need not be subdivided to show amount for each purpose. *People (ex rel.) vs. C. & N. W. R. Co.*, 249—170.

Item of county tax described as "to revenue" is too indefinite. *People (ex rel.) vs. Chicago, B. & Q. R. Co.*, 252—482.

To justify a levy under the description of "contingent expenses" the amount must be small in proportion to the total tax and reasonable in view of size and population of municipality levying the tax. *People (ex rel.) vs. Chicago, B. & Q. R. Co.*, 253—100, 102.

Item of \$1,000 "for sundry and general expenses, the exact nature of which cannot be ascertained in advance," sustained in large and populous county. *People (ex rel.) vs. Bowman*, 253—234.

fees, for salary, clerk hire and expenses of county treasurer, avifahe-
Items for "warrant of board of election commissioners," "for stenographers fees," "for salary, clerk hire and expenses of county treasurer," "for fees of county officers" are sufficiently definite. *People vs. Bowman*, 253—234.

Item for "assessments" cannot be sustained as intended to cover the necessary expense in revising assessments of county. *People vs. Bowman*, 253—234.

Items "for county farm, \$25,000," "for county jail, \$35,000," "for courthouse, \$35,000," are not sufficiently definite. *People vs. Bowman*, 253—234.

An item of \$10,000 "for courthouse claims" is too indefinite. *People vs. R. Co.*, 256—423.

Items of county tax "for repairs of county property," "sinking fund, \$1,000, interest, \$475," is sufficiently definite. *People vs. R. Co.*, 265—502.

Amount levied for roads and amount levied for bridges should be stated separately. *People vs. R. Co.*, 266—183.

Items for "repairs upon, and care, support and maintenance of courthouse, \$4,000" and "for repairs upon, and care, support and maintenance of county jail, \$3,500" are sufficiently specific. *People vs. R. Co.*, 266—196.

An item of county tax of fifteen per cent of the total levy to pay for repair and building purposes is too indefinite. *People vs. R. Co.*, 266—557.

There is no valid objection to levying a gross sum for several different purposes where the several purposes are properly embraced within some general designation. *People vs. R. Co.*, 271—236.

Item for "public buildings, light, heat and repairs, \$12,000," is sufficiently specific. *People vs. Jackson*, 272—494.

An item of \$22,500 "for the payment of fees and salaries and clerk hire of the various county officers" is valid. *People vs. R. Co.*, 273—423.

Levy for fees of jurors and witnesses and expenses of feeding jurors should be separate items. *People vs. Klee*, 282—440.

Levy for furniture, apparatus and machinery for several buildings, departments and institutions of county, specifying each and amount, is sufficiently definite. *People vs. Klee*, 282—440.

Levy for building purposes and expenses of betterment of buildings is too indefinite, if erection of buildings is contemplated. *People vs. Klee*, 282—440.

Items of levy for county purposes for "jurors' fund, for expenses of dieting jurors and fees of jurors and witnesses," and for "county building betterments" are too indefinite. *People vs. Ins. Exchange Bldg.*, 288—486, 487.

Certificate of rates for towns, cities, etc.] Section 122. The proper authorities of towns, townships, districts, and incorporated cities, towns and villages, collecting taxes under the provisions of this act, shall annually, on or before the second Tuesday in August, certify to the county clerk the several amounts which they severally require to be raised by taxation, anything in their respective charters, or in acts heretofore passed by the General Assembly of this state, to the contrary notwithstanding. [As amended by act approved May 3, 1873.]

The county clerk can refer only to tax levy ordinance and bond ordinance in extending tax. *People (ex rel.) vs. Sandberg*. 282—245.

Requirement of Sec. 121 for separate statement of items of tax does not apply to town tax, which are governed by Sec. 122, and it is not necessary that tax for town purposes shall be itemized. *People (ex rel.) vs. Jackson*, 272—494; *P. vs. Ry. Co.*, 266—561.

Under Sec. 17 of Sanitary District Act of 1907 copy of the tax levy ordinance is to be filed as provided in Sec. 122. *People (ex rel.) vs. Bowman*, 253—247.

The certificate of the town clerk is what the authority of the county clerk is based on, in the extension of town taxes. *P., D. and E. R. Co. vs. P.*, 141—483 (1892).

The act, Art. 8, Sec. 1, Chap. 24, controls Sec. 122 of Revenue Act. Thus, for second Tuesday in August herein, Act of 1879, amending Chap. 24, Art. 8, Sec. 1 (Ch. 24, ¶ 112), substitutes third Tuesday in September. *Cairo vs. Campbell*, 116—305.

Sec. 191, infra, cures failure to file certificate by such date. *St. Louis, etc., R. Co. vs. Surrell*, 88—535.

Failure by school directors to certify amount of tax on day named in statute is cured by Sec. 191, infra, as a minor irregularity. *Moore vs. Fessenbeck*, 88—422.

Tax is not invalidated by failure to certify levy within time fixed by law. *Thatcher vs. P.*, 79—597.

It was a fatal objection to the tax that the assessor's certificate required was not made for some days after the day specified in the statute, but the Auditor may file his certificate of levy any time in which the tax will be extended on collector's books. *Gage vs. Nichols*, 33 Ill. App. 365, following *Mix vs. P.*, 72—241; *National Bank vs. Cook*, 77—622; *P. vs. Cooper*, 10 Ill., App. 384.

Amount required must be certified within time fixed by law, or levy will be void. Thus before the act, Sec. 111, Chap. 24, as it now stands, which changed the time, the return must be by the second Tuesday in August. *National Bank vs. Cook*, 77—622; *Gage vs. Nichols*, 135—128 (1890).

It is presumed that the certificate was delivered to such officer at the time indicated by the file-mark signed by the county clerk. *Gage vs. Nichols*, 135—128 (1890).

It is necessary to certify the amounts levied, to county clerk, and file with him a copy of the ordinance. *Mix vs. People*, 106—425.

Where the tax levy ordinance, assessed the tax upon the real and personal property of the city subject to taxation, "as the same is assessed for state and county purposes," that is sufficient. *Mix vs. People*, 106—425.

Semble, to authorize clerk to extend tax certificates mentioned must be filed within time fixed by act. *Mix vs. P.*, 72—241.

Charter limitations on amount of tax which city may levy, not repealed hereby. *Edwards vs. P.*, 88—340.

Collectors' books extending rates.] Section 123. The county clerk shall, annually, make out for the use of collectors, in books to be furnished by the county, correct lists of taxable property as assessed and equalized. [As amended by act approved June 2, 1881. In force July 1, 1881. L. 1881, p. 135.]

Books.] Section 124. In counties not under township organization such book shall be made up by congressional townships; but parts of fractional townships, less than full townships, may be added to full townships, at the discretion of the county board. In counties under township organization, said books shall be made to correspond with the organized townships. Separate books may be made for the collection of all taxes within the corporate limits of cities, towns and villages. This section shall not be construed to interfere with the tax book provided for in this act, for the use of county collectors, for collecting all taxes charged against railroad property and the capital stock of telegraph companies. [Added by amendment approved June 2, 1881. In force July 1, 1881. L. 1881, p. 136.]

Collector's Books—Ruled in Columns—Stamping of Receipts.] Section 125. The respective county clerks shall cause the collector's books to be properly ruled for the several classes of property, providing for each class three columns for value, the first to show the assessed valuation, the second to show the valuation as corrected and equalized by the county board, and the third to show the valuation as equalized or assessed by the State Board of Equalization (Tax Commission). Said books to contain proper columns for the extension of the several kinds of taxes and other purposes, and to contain proper columns to insert opposite each piece, lot or tract of land any sales made of the same for taxes or special assessments

for the two preceding years not cancelled and any withdrawals from collection at any tax sale of any special assessment. Such tax sales shall be designated by the word "sold" to be stamped in the proper column, and such withdrawals shall be designated by the word "withdrawn" to be stamped in the proper column, opposite the respective lot or tract of land not released prior to December 1st of each year. The several collectors shall stamp or cause to be stamped upon all receipts given for taxes the information in said columns, to be known as the tax sale column and the delinquent special assessment column. [As amended by act filed June 28, 1917, L. 1917, p. 658.]

Powers and duties conferred on State Board of Equalization to be exercised by Tax Commission. See Note, Sec. 50, supra.

Word "kinds" refers to State and County taxes and the taxes levied and certified to county clerk by divisions of counties mentioned in Sec. 127. *Chicago vs. County of Cook*, 136 A. 120, 125.

Rates—How extended—Valuation—Equalization.] Section 126. Said clerks shall extend the rates of addition or deduction ordered by the county board and State Board of Equalization (Tax Commission), in the several columns provided for that purpose. The rates per cent. ordered by the State Board of Equalization (Tax Commission) shall be extended on the assessed valuation of property, as corrected and equalized by the county board—except that in case of railroad property denominated "railroad track" and "rolling stock" said rates shall be extended on the listed valuations of such designated property. In all cases of extensions of valuations, where the equalized valuation shall happen to be fractional, the clerks shall reject all such fractions as may fall below fifty cents; fractions of fifty cents or more shall be extended as one dollar. [As amended by act approved June 2, 1881. In force July 1, 1881. L. 1881, p. 135.]

Powers and duties conferred upon State Board of Equalization to be exercised by Tax Commission. See Note, Sec. 50, supra.

Extension of town, city, etc., taxes.] Section 127. The said clerks shall estimate and determine the rate per cent. upon the proper valuation of property in the respective towns, townships, districts and incorporated cities, towns and villages in their counties, that will produce, within the proper divisions of such counties, not less than the net amount of the several sums that shall be required by the county board, or certified to them according to law.

Rate per cent should be large enough to produce an amount sufficient to cover several amounts required and commissions for collection. *R. Co. vs. Baldridge*, 177—232; *P. vs. R. Co.*, 270—477, 482.

The entire levy is not vitiated even though rate per cent for tax is erroneously ascertained. *Vittum vs. P.*, 183—157.

State, county, town, road and bridge, village, city, district, school and all other taxes.] Section 128. All state taxes shall be extended by the respective county clerks upon the property in their counties upon the valuation produced by the equalization and assessment of property by the State Board of Equalization (Tax Commission). All other taxes shall be extended upon the valuation produced by the equalization and assessment of property by the county Board of Review, and all property originally assessed by the State Board of Equalization (Tax Commission). In the extension of taxes the fraction of a cent shall be extended as one cent. [As amended by act approved May 10, 1901. In force July 1, 1901. L. 1901, p. 272.] See Juhl Law, post.

Powers and duties conferred on State Board of Equalization to be exercised by Tax Commission. See Note, Sec. 50, *supra*.

This section does not prescribe a limitation upon taxation. *R. Co. vs. People*, 213—458.

The clerk may raise fractions or decimals to whole numbers in the aggregate tax of each taxing body, but he is not authorized to raise fractions to whole numbers as to each separate item in the levy of a taxing body. *People (ex rel.) vs. Chicago, L. S. & E. R. Co.*, 270—477.

The provision that the fraction of a cent shall be extended as 1 cent, applies to the rate and not to the tax itself after it is extended. *R. R. Co. vs. People*, 224—155.

Library tax is a city tax and should be extended in a column with the city tax. *Chicago vs. County of Cook*, 136 A. 120, 125.

Forfeited property—Back taxes.] Section 129. In all cases where any real property has heretofore been or may hereafter be forfeited to the State for taxes or special assessments levied thereon remaining unpaid, it shall be the duty of the clerk, when he is making up the amount of tax due on such real property for the current year to add the amount of back taxes and special assessments, interest, penalty and printers' fees remaining due on such real property, with one year's interest, at ten per cent. on all taxes forfeited before the year 1879, and twenty-five per cent. on all taxes forfeited in 1879 and thereafter up to the time of the passage of this Act, and twenty-five per cent. on all taxes and special assessments hereafter levied and forfeited on the amount of taxes and special assessments due, to the tax of the current year, and the aggregate amount so added together shall be collected in like manner as the tax on other real property for that year may be collected: **Provided**, that the county clerk shall first carefully examine said list, and strike out therefrom all errors, and otherwise make such

corrections as may be necessary with respect to such property or tax. [As amended by act filed June 28, 1917. L. 1917, p. 658.]

Need not set out the amount of taxes for each year, as this applies to forfeited taxes. *Wright vs. P.*, 87—582; *Hale vs. P.*, 87—72. But defects of notice of application are waived by owner's appearance and resistance of application. *Hale vs. P.*, 87—72.

This section relates to "forfeited taxes" as distinguished from "back taxes." *Neff vs. Smyth*, 111—100.

Where under Secs. 129 and 229, whereby forfeited taxes are added to current taxes and a judgment obtained for the total in a proceeding under Sec. 191, the owner cannot at this proceeding raise any objections he could properly have raised each year when those judgments were obtained. *P. vs. Smith*, 94—226.

Back tax, interest, penalty and printer's fees should be added to tax of current year, whether judgment for such back tax was properly rendered or not. The interest, penalty, etc., is imposed as a penalty on the owner for failure to pay his taxes in due time, and their imposition is not made to depend on the forfeiture, being strictly regular in form. *P. vs. Smith*, 94—226.

Revenue Act contemplates two cases: one under Secs. 129 and 229, where property has been forfeited to State, when interest, penalty, etc., are to be added to back tax; other under Sec. 277, where there has been no forfeiture, in which back tax simply is to be added to tax of later year. It is sufficient that there had been in fact a forfeiture of the lands and lots to the State, whether in due form or not. The imposition of this penalty was therefore sustained. *Belleville Nail Co. vs. P.*, 98—399.

The addition of penalties, interest and costs was objected to as being without sanction of law. Thus, where a tax assessed on property liable was prevented from being collected for any year or years on account of any erroneous proceedings, Sec. 277 applies. Otherwise, Sec. 129 applies, and to justify the imposition of penalties, it must have appeared that the taxes were properly forfeited. Sec. 299 provides that the amount due on lands forfeited to the State and remaining unpaid on the first day of November, shall be added to the taxes of the current year. The owner could not, by paying the current taxes, avoid the forfeiture of his land for back taxes and so avoid penalties. *Biggins vs. P.*, 106—270.

The forfeiture of any one year is a single item, including current and back taxes, together with forfeitures, costs, etc. All of which items are merged into one by the judgment of the County Court and constitutes a new forfeiture. *Carrington vs. Poeple*, 195—484.

Although back tax listed irregularly so that owner is not liable to pay statutory penalty of 25 per cent to redeem, yet he must, to redeem, pay purchaser amount of tax and 6 per cent interest thereon. The back taxes and forfeitures must be added to or combined with the tax for the current year. Where the owner asks the current taxes to be extended against the whole property as a unit, he thereby impliedly consents to the addition of back and forfeited taxes to the whole. *Stamposki vs. Stanley*. 109—210.

Except where back taxes have been placed on collector's warrant by county clerk, by adding same to taxes for current year against same property as that forfeited, and where such back taxes are made upon warrant, part of

aggregate amount so added together, no authority is given by statute to court to render judgment against any land "for back tax and forfeitures." *Stamposki vs. Stanley*, 109—210.

The provision for adding 25 per cent to the taxes on forfeited lands is a penal statute, and should not be held to embrace property not clearly within its terms. *Hosmer vs. Hunt Drainage District*, 134—317 (1890).

It is not required that the years for which taxes were assessed and levied shall be stated in the return to the court. Even though the clerk figured too great a penalty on forfeitures by adding interest on interest and costs embraced in forfeitures for preceding years, if the judgment of the County Court is for no more than could be legally figured, the mere error of the record will not invalidate the judgments. *Chambers vs. P.*, 113—509.

Taxes for the current year, and not back taxes, are referred to in the requirement that list show the year or years for which assessments are due and valuation. *Chambers vs. P.*, 113—509.

Interest to be added is on back tax alone, not on sum of back tax and penalties. *P. vs. Gale*, 93—127.

By amendment the penalty was made 25 per cent on all taxes levied and forfeited after the amendment took effect, but prior to amendment of 1879 it was 10 per cent on amount of tax due. As to taxes not both levied and forfeited at that time, former statute prevails. *Chambers vs. P.*, 113—509. This amendment complies with Art. 4, Sec. 13, of Constitution of 1870, providing "that no law shall be revived or amended by reference to the title only, but the law revived or the section amended shall be inserted in the new act." Setting out amended section in full as amended, sufficient. *Chambers s. P.*, 113—509.

Statement to auditor.] Section 130. When the books or lists for the collectors are completed, the county clerk shall make a complete statement of the assessment and taxes charged, on blanks, and in conformity to instructions furnished to him by the auditor (Tax Commission). The clerk shall record said statement, and forward it, properly certified, to the auditor (Tax Commission).

Powers and duties conferred on State Board of Equalization and Auditor of Public Accounts to be exercised by Tax Commission. See Note, Sec. 50, *supra*.

State and county equalized rates stated.] Section 131. It shall be the duty of the county clerk to make, in each collector's book, a certificate of the rate of deduction or addition determined by the State Board of Equalization (Tax Commission) in the county to which such books shall pertain; and, also, the rate of addition or deduction determined by the county board in the town, district, city or village to which such book shall pertain.

Powers and duties conferred on State Board of Equalization to be exercised by Tax Commission. See Note, Sec. 50, *supra*.

Collector's warrant.] Section 132. To each collector's book a warrant, under the hand and official seal of the county clerk, shall

be annexed, commanding the collector to collect from the several persons named in said book, the several sums entered in the column of totals opposite their respective names. The warrant shall direct the collector to pay over the several kinds of taxes that may be collected by him, to the respective officers entitled thereto, less the compensation for collection allowed him by law. [As amended by act approved June 2, 1881. In force July 1, 1881. L. 1881, p. 136.]

An officer acting under collector's warrant, regular on face, is protected. *Hill vs. Figley*, 25—156.

Collector is discharged by payment to State Treasurer, although Treasurer fails to report such payment to State Auditor, the remedy of State being against Treasurer. *P. vs. Smith*, 12—281.

Collector may be an officer de facto, although he has not taken oath in manner prescribed, and his acts as such officer de facto will be good as to public and third persons. The jurisdiction of the county clerk to issue the warrant of authority to collect tax, i. e., by delivering to him a copy of the list of taxable property returned by the assessor, is special, and the collector acting thereunder must show the clerk issuing it acted within his authority. *Guyer vs. Andrews*, 11—494.

Qualification of town and district collectors—Bond—Oath.]

Section 133. Every town or district collector, before he enters upon the duties of his office, and within eight days after he receives notice of the amount of taxes to be collected by him, shall execute a bond, with two or more securities, to be approved by the county board, or supervisor and town clerk of his town, as the case may require, in double the amount of such taxes, conditioned for the faithful execution of his duties as such collector. Signatures to such bond, signed with a mark, shall be witnessed, but in no other case shall witness be required. Said bond shall be substantially in the following form, to wit:

Know all men by these presents, that we A B, of the.....of.....in the county of....., in the state of Illinois, as town (or district) collector, and C D and E F, of the said county and state, as securities, are held and firmly bound unto the People of the State of Illinois, in the penal sum of..... for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators firmly by these presents. Signed and sealed, this.....day of.....A. D. 18....

The condition of the foregoing bond is such, that if the above bound A B shall perform all the duties required to be performed by him as collector of the taxes for the year 18...., in the town (or district) of....., in the county of....., Illinois, in the time and manner prescribed by law, and, when he shall be succeeded in office, shall surrender and deliver over to his successor in office all books, papers and moneys appertaining to his said office, then the foregoing bond to be void: otherwise to remain in full force.

A B, [Seal.]

C D, [Seal.]

E F, [Seal.]

He shall also take and subscribe an oath, to be indorsed on the back of the bond, substantially as follows:

I do solemnly swear that I will support the constitution of the United States, and the constitution of the State of Illinois, and that I will faithfully discharge the duties of the office of town (or district) collector, according to the best of my ability.

Action not maintainable against sureties on town collector's bond until a warrant has been issued to sheriff for levying amount of collector's deficit on his property, as sureties have right to have principal's property first taken. *Marks vs. Butler*, 24—567.

The collector is required to take two oaths, one under Township Organization, Ch. 139, Art. 9, Sec. 85, and the other under this section. *P. vs. Callaghan*, 83—128.

There is no duty on the clerk of the County Court or any other person to give to the collector notice of the amount of the tax to be collected, in order that he may know what amount of bond to give. *Ross vs. People*, 78—375.

Bond and oath recorded—Lien of bond.] Section 134. The chairman of the county board (or town supervisor, as the case may require,) shall, within six days thereafter, file such bond, with such approval indorsed thereon, in the office of the recorder, who shall record the same, including the oath, in a separate book to be provided for the purpose, and when recorded shall be filed in the office of the county clerk by the recorder. Said bond, when so filed for record, shall be a lien against the real estate of such town or district collector, until he shall have complied with the conditions thereof. Under former similar statute, collector's bond was held not lien on his homestead. *Hume vs. Gossett*, 43—297.

Delivery of collector's books—Warrants—When delivered.] Section 135. The respective county clerks shall, on or before the twentieth day after the first day of December, annually, or as soon thereafter as the collectors are duly qualified, deliver to them the books for the collection of taxes; and it shall be the duty of the collectors, within such time, or as soon thereafter as they are qualified, to call at the clerk's office and receive said books. The tax book, provided for collecting all taxes charged against railroad property and the capital stock of telegraph companies, shall be delivered to the county collector within the same time, annually, or as soon thereafter as he is qualified. [As amended by act approved June 2, 1881. In force July 1, 1881. L. 1881, p. 130.] See Section 52, Revenue Law of 1898, post.

Under this section, prior to amendment of 1881, taxes were due on the 10th of December, and, semble, since such amendment on the 20th. *P. vs. Ryan*, 116—73.

Collector's warrants.] Section 136. To each town or district collector's book a warrant, under the hand of the county clerk and seal of his office, shall be annexed, commanding such town or district collector to collect from the several persons named in said town or district collector's book, the several sums of taxes therein charged opposite their respective names.

Collector's warrant may be written in on some page of book or may be annexed to collector's book by muelage, wire or cord, or in any manner. *Loehr vs. P.*, 132—504.

Distress for personal tax.] Section 137. In all cases the warrant shall authorize the town or district collector, in case any person named in such collector's book shall neglect or refuse to pay his personal property tax, to levy the same by distress and sale of the goods and chattels of such person; and it shall require all payments therein specified to be made by such town or district collector on or before the tenth day of March next ensuing. [As amended by act approved May 3, 1873.]

Distress not an exclusive remedy, but action of debt also lies. *Geneva vs. Cole*, 61—397; *Dunlap vs. Gallatin County*, 15—7; *Ryan vs. Gallatin County*, 14—78.

“Goods and chattels” in Sec. 137 are to be construed as having the same meaning as personal property in Sec. 254, and as comprehending every species of personality which may, under the statute, be made the subject of levy and sale under execution issued upon a judgment at law. *Loeber vs. Leininger*, 175—487; *Heurich vs. Harrigan*, 288—170.

How to pay over taxes collected.] Section 138. The warrant shall direct the town or district collector, after deducting the compensation to which he may be legally entitled, to pay over to the proper offices the amount of tax collected for the support of highways and bridges, and to the supervisor of the town the moneys which shall have been collected therein, to defray town expenses; to the proper school officers, the district school tax; to the city or incorporated town or village treasurer, or other proper officer, the taxes or special assessments collected by him for such city or incorporated town or village, or others, as often and at such times as may be demanded by the proper officer; and to the county collector, the county tax and the taxes payable to the state treasury collected by him.

County clerk's certificate to county collector.] Section 139. On the delivery of the tax books to the town or district collectors, the clerk shall make a certified statement setting forth the name of each town or district collector, the amount of taxes to be collected and paid over for each purpose for which the tax is levied in each of the

several towns or districts, cities and villages, and furnish the same to the county collector.

Collection district and who collector in counties not under township organization—County a district—Sheriff collector.] Section 140. Each county in this state, not under township organization, shall be a collection district, for the purposes of this act; and the sheriffs of such counties shall be, respectively, ex-officio, district collectors of such collection districts.

Effect of statute is only to impose additional duties upon treasurer and sheriff, not to confer on them additional office, so as to entitle to additional compensation. *Kilgore vs. P.*, 76—548; *Broadwell vs. P.*, 76—554.

Offices of sheriff and collector of taxes were distinct under Act of 1839 up to 1845. By Revised Statutes of 1845, Chap. 89, Sec. 27, sheriff was made ex officio collector. Performance of collector's duties thereunder secured by sheriff's general bond. *Wood vs. Cook*, 31—271.

Vacancies and resignations—How vacancies filled—Not to exonerate former collector.] Section 141. If any town or district collector in this state shall refuse to serve, or shall die, resign or remove out of the county, district or town for which he was elected or appointed, or the office becomes vacated in any other way, before he shall have entered upon or completed the duties of his office, or shall in any way be prevented from completing the same, the county or town board, as the case may require, shall forthwith appoint a collector for the remainder of the year, who shall give the like security and be subject to the like penalties, and have the same power and compensation as the town or district collector in whose place he was appointed, and the county collector shall forthwith be notified of such appointment. Such appointment shall not exonerate the former town collector or his securities from any liability incurred by him or them. No resignation of a town or district collector shall be accepted, unless sufficient cause is shown, nor shall the person resigning be re-appointed to complete the collections in the same or any other town or district in the county.

Duty of appointee.] Section 142. The town or district collector so appointed shall keep an account of all collections made by the former collector, so far as he can ascertain the same, and when any one shall present a receipt for taxes paid to the former collector, he shall mark against the amount of such taxes to whom and when paid.

Extension of time in such case.] Section 143. In case of such appointment, the chairman of the county board, or the supervisor of the town, may extend the time for the collection of taxes, for a

period not exceeding twenty days, of which extension the county collector shall be notified.

Collectors—Who collects.] Section 144. The treasurers of counties under township organization, and the sheriffs of counties not under township organization, shall be ex-officio county collectors of their respective counties.

Sheriffs in counties not under township organization fill the offices of county collector and district collector in addition to that of sheriff. *Ryan vs. P.*, 117—486.

Bond—Oath.] Section 145. Said collector shall, on or before the first day of December, annually, or as soon as he is elected and qualified, and before he enters upon the duties of his office as collector, execute a bond, in addition to his bond as treasurer, in a penal sum of at least double the amount of state taxes to be collected in the year next thereafter, with two or more securities, who shall be residents of the said county, and owners of real estate located within this state equal in value to the amount specified in the bond; which amount shall be determined, and which bond shall be approved, by the county board. Each name shall be recited, in full, in the body of the bond. The signatures to such bonds, signed by a mark, shall be witnessed, but in no other case shall witness be required. Such bond shall be substantially in the following form, to wit:

Know all men of these presents, that we, A B, collector, and C D and E F, securities, all of the county of....., and State of Illinois, are held and firmly bound unto the People of the State of Illinois, in the penal sum of..... dollars, for the payment of which, well and truly to be made, we bind ourselves, each of us, our heirs, executors and administrators, firmly by these presents.

Signed and sealed, this.....day of.....18....

The condition of the foregoing bond is such that if the above bound A B shall perform all the duties required to be performed by him as collector of the taxes for the year 18...., in the county of....., in the State of Illinois, in the time and manner prescribed by law, and when he shall be succeeded in office, shall surrender and deliver over to his successor in office all books, papers and moneys appertaining to his said office, then the foregoing bond to be void; otherwise to remain in full force.

A B, [Seal.]

C D, [Seal.]

E F, [Seal.]

He shall also take and subscribe an oath, to be indorsed on the back of the bond, substantially as follows:

I do solemnly swear that I will support the constitution of the United States, and the constitution of the State of Illinois, and that I will faithfully discharge the duties of the office of county collector according to the best of my ability.

Collector's sureties presumed to know that revenue laws will be changed, and

become surety with that expectation, and are not discharged by alteration in laws prescribing his duties, not materially changing his duties nor prejudicing their interests. *Compher vs. P.*, 12—290.

The execution of the bond is a part of the manner of collecting the taxes. Without it there would be no power to collect them legally. The law has required the bond to be executed in a particular manner, and imposed the duty on the Board of Supervisors to require a compliance with its terms, and they must be held to be invested with ample power to enforce a compliance with the law in this particular. Thus in the absence of express statutory provision, the board might properly require a second bond for double the amount of taxes to be collected, and a bond thus given would not be a mere voluntary bond. Being a collector of State, the county, school, and other taxes, it is immaterial what he is called in the bond, and if in the bond the wrong year of tax was given, equity would reform the instrument. Where a collector fails or refuses to report at the regular session of the Board of Supervisors, he is in default, and thenceforth the burden is on him to show what disposition he has made of public funds that have come to his hands. Having collected taxes, the collector cannot be heard to question the order levying the tax and under which he proceeded. *Coons vs. People*, 76—383.

In an action of case against the supervisors of the county for refusing to approve a bond submitted by a collector, it is not enough to aver merely that the bond was good and sufficient, but the averments must show that it conformed to the requirements of the law. *Kilgore vs. Ferguson*, 77—213.

Suit on tax collector's bond maintainable only by showing breach of condition; safe keeping of taxes collected by collector of defunct municipality, not a breach. Failure to keep money safe would have been a breach. *Dodge vs. P.*, 113—491.

County collector and sureties on their bonds are liable for all tax money collected until same is properly accounted for as provided by Revenue Act. *People vs. Jamison*, 157 A. 546, 551.

It is duty of collector at expiration of his term to turn over to his successor all moneys in his hands collected by virtue of his office, and sureties are liable for collector's failure to do so. *People vs. Jamison*, 157 A. 546, 550.

Approved—Recorded—Sent Auditor—Lien.] Section 146. The collector's bond shall be approved by the county board, and shall be recorded on the records of said board, and forthwith mailed to the auditor by the county clerk. Said clerk shall attach his certificate to said bond, under the seal of his office, showing that it has been duly approved and recorded. Said bond, when approved and recorded, shall be a lien against the real estate of such collector until he shall have complied with the conditions thereof.

The approval and recording of collector's bond creates statutory lien which attaches to after-acquired lands of principal. *Crawford vs. Richeson*, 101—351.

The lien of State on collector's lands, although then in hands of innocent purchasers, State having no notice of existence of such purchasers, is not discharged by Act of Legislature extending time for payment of taxes by collector, with assent of sureties. *Crawford vs. Richeson*, 101—351.

How otherwise approved.] Section 147. The chairman of the county board, the county judge and the county clerk shall have power and authority to approve the bond of the county collector in like manner as the county board has to approve said collector's bond; and said bond, when so approved, shall be subject to the several provisions of this act, the same as if approved by said board.

Approval of bonds by auditor.] Section 148. The collector's bond, when received by the auditor, and if found to be made in conformity to law, and the securities satisfactory, shall be filed in his office and the fact thereof certified to the county clerk. If the auditor finds said bond to be not in accordance with law, or if he has reason to doubt the sufficiency of the surety, he shall return the bond to the county clerk, who shall notify the collector to make a sufficient bond. If a new bond is required, it shall be approved and recorded and subject to the requirements of this section, the same as the first bond given by the collector. No tax books or lists shall be placed in the hands of the county collector until the auditor's certificate, under the seal of his office, has been received by the county clerk, showing that the collector's bond has been received and filed in the auditor's office. Nothing in this section shall be construed as relieving the securities of a collector from liabilities incurred under a bond not approved and filed by the auditor.

Discharge of sureties.] Section 149. The securities on any bond given in pursuance of this act, or either of them, may, at any time after the execution of said bond, if they, or either of them, have good reason to believe that the officer in said bond is about to fail to comply with the conditions thereof, file with the county clerk a notice in writing, verified under oath, by the person asking to be discharged, setting forth the facts in the case, and asking to be released from any further liability on said bond; whereupon the clerk, with whom such notice shall be filed, shall notify the said officer to give additional security, equal to the security about to be released by the county board, which notice may be served by the said clerk, or by any person appointed by said board or clerk. If the officer so notified shall not appear and give additional security within two days after notification, the county board may remove him from office; and in all such cases said board shall appoint some person to fill the vacancy occasioned by such removal, who shall execute bond, qualify and perform the duties required as such officer.

When collector defaults.] Section 150. If the securities on any collector's bond, or either of them, shall be satisfied that such collector is making improper use of the funds collected by him, or has

absconded, or is about to abscond, from this state, whereby said securities may become liable to pay any sum or sums of money it shall be lawful for said security to sue out a writ of attachment against the goods and chattels of such collector in like manner as he would be authorized to do if said collector was personally indebted to such security; and the money collected on any such attachment shall be paid into the state, county, town or city treasury, by the officer collecting the same, in like manner as if paid over by the collector.

Death of collector.] Section 151. In case of the death of any county collector during the time the tax books are in his hands, and before the time specified in this act for making settlements, the county clerk shall demand and take charge of the tax books. Said clerk shall appoint one or more competent persons to examine said tax books; and it shall be the duty of the persons so appointed to ascertain the amount remaining uncollected, and make out a correct abstract of the same: Provided, that should there be but a small portion of the taxes collected at the time of the death of the collector, then the amount actually collected shall be ascertained, and the same books used in completing the collections.

Deputy collectors.] Section 152. Collectors may appoint deputies by an instrument in writing, duly signed, and may also revoke any such appointment at their pleasure; and may require bonds or other securities from such deputies, to secure themselves. And each such deputy shall have like authority, in every respect, to collect the taxes levied or assessed within the portion of the county, town, district, village or city assigned to him, which by this act is vested in the collector himself; but each collector shall, in every respect be responsible to the state, county, towns, villages, cities, districts and individuals, companies or corporations, as the case may be, for all moneys collected and for every act done by any of his deputies, whilst acting as such, and for any omission of duty of such deputy. Any bond or security taken from a deputy by a collector, pursuant to this act, shall be available to such collector, his representatives and securities, to indemnify them for any loss or damage accruing from any act of such deputy.

Warrants to deputy collectors.] Section 153. The county clerk, on being requested by any collector, shall attach a warrant, under his hand and the seal of his office, to any list furnished by such collector to his deputy, which warrant shall be in the same manner and form as is required in the original collector's list or book, except that the amount collected by such deputy shall be paid to the col-

lector, who shall pay the same over to the proper officer or persons.

Manner in which taxes are to be collected—Kind of funds.]

Section 154. The county revenue shall be collected in gold and silver coin, United States legal tender notes, current national bank notes, county orders and jury certificates, and in no other currency. The revenue for state purposes shall be collected in gold and silver coin, United States legal tender notes, current national bank notes and auditors' warrants, and in no other currency. The revenue for city purposes shall be collected in gold and silver coin, United States legal tender notes, current national bank notes, city comptrollers', city auditors' or city clerks' warrants or orders on the city treasurer, and in no other currency. State taxes levied for any special purpose, other than to defray the ordinary expenses of the state government, shall be collected in gold and silver coin, United States legal tender notes, current national bank notes and in no other currency. All other taxes shall be collected in gold and silver coin, United States legal tender notes and in current national bank notes, and in no other currency unless otherwise specially provided for. [As amended by act approved May 25, 1877. In force July 1, 1877. L. 1877, p. 171.]

How collection made.] Section 155. Every town collector, and every county collector, in cases where there is no town collector, upon receiving the tax book or tax books, shall proceed to collect the taxes mentioned herein: Provided, that it shall be the duty of every county collector to prepare tax receipts in triplicate for all taxes assessed, which shall be filled out in accordance with the requirements of section 163 of this Act, one copy which shall be mailed by such collector at least thirty days prior to the date upon which unpaid real estate taxes become delinquent, to the owner of the property taxed, or to the person in whose name such property is taxed, another copy of which shall be used by said collector in receipting for the tax paid, and the remaining copy thereof to be retained by such collector. Provided, further, that there shall be printed upon each such receipt, or upon a separate slip which shall be mailed to each person assessed with the copy of the receipt hereinabove provided, a statement of the rates of the various taxes and the total tax rate. Provided, also, that the failure or neglect of the collector to mail such receipt, or the failure of the taxpayer to receive the same, shall not affect the validity of any tax, or the liability for the payment thereof. [As amended by act approved June 28, 1919. L. 1919, p. 765.]

Collector cannot levy on personalty to collect tax on realty. And payment of taxes under threat of sale of realty is not duress. *Conkling vs. City of Springfield*, 132—420.

City council may not authorize payment of taxes in any funds differing from those provided by statute. *Conkling vs. City of Springfield*, 132—420.

Amount of tax voluntarily paid cannot be credited on other taxes though the paid taxes was invalid. *People (ex rel.) vs. Chicago, B. & Q. R. Co.*, 247—340, 345.

Distress for taxes.] Section 156. In case any person, company or corporation shall refuse or neglect to pay the taxes imposed on him or them, when demanded, it shall be the duty of the collector to levy the same, together with the costs and charges that may accrue, by distress and sale of the personal property of the person, company or corporation who ought to pay the same. [Confined to personal property by Section 137.]

Sale of property distrained—Surplus.] Section 157. The collector shall give public notice of the time and place of sale, and of the property to be sold, with the name of the delinquent, at least five days previous to the day of sale, by advertisements, to be posted up in at least three public places in the town or district where such sale is to be made. Such sale shall be by public auction, and, if practicable, no more property shall be sold than sufficient to pay the tax, costs and charges due. If the property distrained shall be sold for more than the amount of the taxes and charges due, the surplus shall be returned to the person in whose possession such property was when the distress was made, if no claim be made to such surplus by any other person. If any other person shall claim such surplus, on the ground that the property sold belonged to him, and such claim be admitted by the person for whose tax the same was distrained, the surplus shall be paid to such owner.

Removal within county.] Section 158. In case any person against whom a tax shall be assessed, under the provisions of this act, shall have removed from one town or district to another town or district in the same county without paying such tax, it shall be lawful for the collector having the tax books in which such tax is charged, to levy and collect such tax of the goods and chattels of the person assessed, in any town or district within said county to which such person shall have removed, or from property of such person wherever the same may be found in said county.

Fees on distraint.] Section 159. In levying on and selling personal property for taxes, the collector shall be governed by the same rules and be entitled to the same fees as constables are or may be

for like services on executions; but in no case shall any collector charge mileage, unless he is compelled to distrain property.

Removal from county.] Section 160. In case any person against whom taxes have been levied, under the revenue laws of this state, in any county, town, city or district of this state, shall have removed from such county, town, city or district, after such assessment has been made, and before the collection of the same, the county clerk, when directed by the county board, shall issue a warrant under his hand and seal of office, directed to any sheriff, coroner or constable of the county, town, city or district to which such person may have removed, commanding such officer to whom the warrant may be directed to make the amount of such tax, together with the costs and charges that may accrue, from the personal property of the person owing such tax—distrain and sale of property under this section to be in the same manner as provided in this act for other cases of distrain and sale of personal property. The taxes which may be collected under this section shall be disposed of in the manner required by this act with respect to taxes collected in any other manner. All other parts of this act providing for cases of failure of officers to pay over taxes, shall apply to all officers, collecting taxes under this section, who fail to pay over and correctly account at the proper time and manner for the taxes collected by them.

Collection after return of county collector.] Section 161. The power and duty to levy and collect any tax due and unpaid, shall continue in and devolve upon the county collector and his successors in office, after his return and final settlement until the tax is paid; and the warrant attached to the collector's book, shall continue in force and confer authority upon the collector to whom the same was issued, and upon his successors in office, to collect any tax due and uncollected thereon, although such books may have been returned, or the tax carried forward into any other book. This section shall apply to all collectors' books and tax warrants heretofore issued, upon which taxes may be due and unpaid, as well as those hereafter issued. [As amended by act approved May 29, 1879. In force July 1, 1879. L. 1879, p. 246.]

Payment on part of tract—Undivided interest.] Section 162. The collector shall receive taxes on part of any lot, piece or parcel of land charged with taxes, when a particular specification of the part is furnished. If the tax on the remainder of such lot or parcel of land shall remain unpaid, the collector shall enter such specification in his return, so that the part on which the tax remains unpaid

may be clearly known. The tax may be paid on an undivided share of real estate. In such case the collector shall designate on his record upon whose undivided share the tax has been paid.

Owner of undivided interest in land may protect his interest by paying tax thereon, and need not also protect other interests. *Le Moyne vs. Harding*, 132—23; *Lawrence vs. Miller*, 86—502.

Section will not be enforced to aid a scheme to enable owner of some 1,500 lots to avoid payment of taxes thereon by conveying undivided interests therein, ranging from a 1/50 to a 1/5000 part, to deter bidder at tax sales from buying the lots because of existence of such undivided interests. *Glos vs. Stuckart*, 277—346.

Section has no application to proceeding in equity to foreclose a tax lien on property forfeited to the State. *People vs. Cant*, 260—497.

Entry of payment—Receipt—Evidence—Name, etc., of owner.]

Section 163. Whenever any person shall pay the taxes charged on any property, the collector shall enter such payment in his book, and give a receipt therefor, specifying for whom paid, the amount paid, what year paid for, and the property and value thereof on which the same was paid, according to its description in the collector's books, in whole or in part of such description, as the case may be; and such entry and receipt shall bear the genuine signature of the collector or his deputy receiving such payment; and whenever it shall appear that any receipt for the payment of taxes shall be lost or destroyed, the entry so made may be read in evidence in lieu thereof. The collector shall enter the name of the owner, or the person paying tax, opposite each tract or lot of land, when he collects the tax thereon, and the post-office address of the person paying such tax. [As amended by act approved June 2, 1881. In force July 1, 1881. L. 1881, p. 136.]

Sworn statements of collections to be made—Payments—Thirty day settlements with cities, etc.] Section 164. Town and district collectors shall, every thirty days, when required so to do by the proper authorities of incorporated towns, cities and villages, road and school districts, for which any tax is collected, render to said authorities a statement of the amount of each kind of tax collected for the same, and at the same time pay over to such authorities the amount so shown to be collected. [As amended by act approved May 3, 1873.]

Thirty day settlements with county collector.] Section 165. Such town and district collectors shall, every thirty days, render a similar account of the taxes payable to the state treasury, and of the county taxes, to the county collector, and at the same time pay over the amount of such taxes to said county collector.

Local taxes to be paid over, etc.] Section 166. Said town and district collectors shall pay over the town, road, school and other local taxes, as may be directed in the warrant attached to the collector's book.

Final settlement for local taxes before return.] Section 167. Each town and district collector shall make final settlement for the township, district, city, village and town taxes, charged in the tax books, at or before the time fixed in this act for paying over and making final settlement for state and county taxes collected by them. In such settlements, said collectors shall be entitled to credit for the amount of their commissions on the amount collected, and for the amount uncollected on the tax books, as may be determined by the settlement with the county collector.

Duplicate receipts.] Section 168. The officer to whom any such moneys may be paid, under the preceding sections, shall deliver to the collector duplicate receipts therefor.

Return of town and district collectors to the county collector—When return made.] Section 169. Town and district collectors shall return the tax books and make final settlement for the amount of taxes placed in their hands for collection, on or before the tenth day of March next after receiving the tax books: Provided, that the county collector may first notify in writing, the several town or district collectors upon what day, within twenty days after the tenth day of March they shall appear at his office to make final settlement, and at the time of making return to the county collector, each town or district collector in counties under township organization, shall make out and deliver to the county collector a detailed statement, in writing of the amount of taxes he has been unable to collect on real estate and from persons charged with personal property taxes, which statement shall show each kind of tax, the same as in the tax book delivered to him by the county clerk, and shall show the number of the page of the tax book and the number of the line of the page on which the item appears to be delinquent, and in case where no taxes have been paid on any one page on the collector's book, the page footings of the taxes on such page may be copied into such statement. It shall not be necessary to give in the statement the description of the real property delinquent, nor the names of the owners thereof, nor the names of the persons delinquent for personal property taxes. The town or district collector shall add up the delinquent taxes in said statement and make a summary thereof, setting forth the aggregate amount of each kind of tax and the total de-

linquent, in the same manner as in his warrant, and shall make oath that said statement is true and correct. [As amended by act approved and in force May 31, 1881. L. 1881, p. 131.]

This confers authority upon the county collector to fix upon any day he may determine, within twenty days of the 10th day of March, upon which he will require the town collector to return his tax book and settle, and the town collector must obey on receiving his notice. *Moeling vs. People*, 138—513.

The return of county collector is prima facie evidence of legality of personal tax, as where the residence of owner is questioned. *Mahany vs. P.*, 138—311 (1891).

Collector's sworn return is prima facie evidence of facts therein stated, as that the tax was due and unpaid. *Karnes vs. P.*, 73—274.

Form of return as to personal tax.] Section 170. If any town or district collector shall be unable to collect any tax on personal property, charged in the tax book, by reason of the removal or insolvency of the person to whom said tax is charged, or on account of any error in the tax book, he shall, at the time of returning his book to the county collector, note, in writing, opposite the name of each person charged with such tax, the cause of failure to collect the same, and shall make oath that the cause of delinquency or error noted is true and correct, and that such sums remain due and unpaid, and that he has used due diligence to collect the same, which affidavit shall be entered upon said collector's book, and be signed by the town or district collector. [As amended by act approved May 29, 1879. In force July 1, 1879. L. 1879, p. 247.]

General affidavit pasted in back of collector's book is not sufficient to satisfy requirement relative to charging personal property tax upon land, where there is no notation in the book opposite name of person charged with tax and there is no statement in affidavit that causes of delinquency is true and correct. *People vs. Scheffley*, 252—486, 490.

The collector should enter on record "the causes of failure to collect the same" to show that personal property taxes are delinquent. Insolvency of a party owing a personal tax is not a prerequisite for charging taxes upon his land. *Shelbyville Water Co. vs. P.*, 140—545 (1892).

Under former statute, the oath of town collector to his return of delinquent list was indispensable to validity of proceedings, and where the statute required oath before county treasurer, oath before county clerk was insufficient. *Hough vs. Hastings*, 18—312.

Credits, etc.] Section 171. Upon the filing of said book, the county collector shall allow the town or district collector credit for the amount of taxes therein stated to be unpaid, and shall credit the same to the several funds for which said tax was charged. When the county collector makes settlement with the county board, such statements shall be sufficient voucher to entitle him to credit for the

amount therein stated, less such amount thereof if any, that may have been collected by him. In no case shall any town or district collector, or county collector, be entitled to abatements for personal property tax until the statement and affidavit are filed. [As amended by act approved May 29, 1879. In force July 1, 1879. L. 1879, p. 247.]

Form of return as to real estate.] Section 172. Each town or district collector, at the time of returning his tax book to the county collector, shall make affidavit, to be entered upon such book and subscribed by the collector, that the taxes charged against each tract or lot, or assessment of personal property remain due and unpaid at the date of making such affidavit in each case where there does not appear in the proper column the amount of such taxes as having been paid to such collector, and the date of payment and the name of any person as having paid the same; which affidavit shall be prima facie evidence of the facts therein stated. [As amended by act approved May 29, 1879. In force July 1, 1879. L. 1879, p. 247.]

The collector's report is prima facie evidence of legality of the tax. *Pike vs. P.*, 84—80.

To note what personal tax can be collected from real estate.] Section 173. Each town or district collector shall particularly note, in his returns to the county collector, all cases of personal property tax that he was unable to collect, which can be made from real estate of the persons owing such tax.

Suit on bond.] Section 174. If the town or district collector shall forthwith cause the bond of such collector to be put in suit, amount in his hands, when required in this act, the county collector shall forthwith cause the bond of such collector to be put in suit, and recovery may be had thereon for the sum due, for all taxes and special assessments, and twenty-five per cent. thereon as damages, with costs of suit.

Satisfaction piece.] Section 175. Upon the final settlement of the amount of taxes directed to be collected by any collector, in any of the towns or districts in this state, the county collector shall, if requested, give to such collector, or any of his securities, a satisfaction piece in writing.

Satisfaction piece may be recorded — Effect.] Section 176. Such satisfaction piece may be recorded in the recorder's office, and when so recorded shall operate as a discharge of the securities and

the lien upon the property of the collector, except as to all suits commenced upon such bond within three years after the recording of the same.

Delinquent defined.] Section 177. All real estate upon which taxes remain due and unpaid on the tenth day of March, annually, or at the time the town or district collector makes return of his books to the county collector, shall be deemed delinquent; and all such due and unpaid taxes shall bear interest after the first day of May at the rate of one per cent. per month until paid or forfeited; parts or fractions of a month shall be reckoned as a month. And all such collections on account of interest shall be paid into the county treasury to be used for county purposes. [As amended by act approved May 29, 1879. In force July 1, 1879. L. 1879, p. 253.]

“Delinquent taxes of 1903” meant taxes levied in 1902, not paid within the time specified in the statute. *R. R. Co. vs. People*, 207—312.

One per cent. per month is prospective only. It is not in conflict with Constitution, Art. 4, Sec. 22, which prohibits passage of special law regarding interest on money. *P. vs. Peacock*, 98—172.

This section, as amended by Act of 1879, has no application to taxes assessed and levied before amendatory Act took effect. *P. vs. Thatcher*, 95—109.

Penalties should not be added to taxes the treasurer refuses to accept. *People vs. Ry. T. Co.*, 270-477.

Section does not require amount of penalty to be stated in delinquent list prior to judgment. *People vs. Wabash R. Co.*, 282-218.

Return of delinquent special assessment — To county collector — His duties — Transfer of amounts — Proviso as to certain cities.]

Section 178. When an special assessment made by any city, town or village, pursuant to its charter, or by any corporate authorities, commissioners or persons, pursuant to law, remain unpaid in whole or in part, return thereof shall be made to the county collector on or before the tenth day of March next after the same shall have become payable, in like forms as returns are made for delinquent land tax: **Provided**, that in cities having a population of one hundred thousand or more by the last preceding census of the United States or of this State such return may be made on or before the first day of August for all such special assessments which remain unpaid in whole or in part; **Provided, further** that the subsequent advertisement, judgment and sale of property on account of delinquent special assessments, as hereinafter provided, shall be regarded as supplemental to and as a part of the sale on account of delinquent taxes of the year in which the said supplemental judgment and sale is ordered, and the penalties provided by law, shall attach to both general taxes and special assessments in

like manner as if there were only one judgment and order of sale. County collectors shall collect, account for, and pay over the same to the authorities or persons having authority to receive the same, in like manner as they are required to collect, account for and pay over taxes. The county collector may, upon return of delinquent special assessments to him, transfer the amounts thereof from such returns to the tax books in his hands setting down therein, opposite the respective tracts, or lots, in proper columns to be prepared for that purpose, the amounts assessed against such tract or lot. [As amended by act approved June 28, 1919. L. 1919, p. 766.]

Where Park Commissioners followed Secs. 61 to 67 of Local Improvement Act of 1897 in making special assessments, this section of Act does not apply. *Cummings vs. People*, 213—443.

Not applicable to special assessments collectible under Local Improvement Act of 1897, which directs method of making collections. *Murphy vs. People*, 129 A. 553, 540.

Demand for assessment when tax paid.] Section 179. When any special assessment is returned against property, the taxes upon which shall have been paid to the town or district collector, or when any special assessment which shall have been withdrawn at any previous sale or sales shall be so returned against property upon which the taxes shall have been so paid, it shall be the duty of the county collector to cause demand to be made for the payment of such special assessment, or a notice thereof to be sent by mail, or otherwise, to the owner, if his place of residence is known. The certificate of a collector that such demand was made or notice given, shall be evidence thereof. [As amended by act filed June 28, 1917. L. 1917, p. 658.]

Not applicable to special assessments collectible under Local Improvement Act of 1897. *Murphy vs. People*, 129 A. 533, 540.

Form of receipt.] Section 180. On the application of any person to pay any tax or special assessment upon any real property, it shall be the duty of the county collector to make out to such person a receipt, in which shall be noted all taxes and assessments upon such property, returned to such collector and not previously paid. [As amended by act approved June 2, 1881. In force July 1, 1881. L. 1881, p. 136.]

Powers to collect.] Section 181. County collectors shall have the same powers, and may proceed in the same manner, for the collection of any tax on real or personal property, as town or district collectors: and if in any town or collection district the office of town or district collector is or shall become vacant, and such va-

cancy shall not be filled on or before the tenth day of March next following such vacancy, or if in any town or collection district the books for the collection of taxes, for any reason, have not been or shall not be, delivered to the town or district collector, on or before the tenth day of March in any year, the county clerk shall deliver all such collectors books to the county collector of such county having annexed to each of such books a warrant under the hand and official seal of the county clerk, commanding such county collector to collect from the several persons named in such books, the several sums of taxes therein charged opposite their respective names, and authorizing him in case any person named in such collectors books shall neglect or refuse to pay his personal property tax, to collect the same by distress, and sale of the goods and chattels of such person. It shall thereupon be the duty of such county collector to collect and pay over all taxes, assessments, and other charges shown in such books and to do all acts, required of him by law, in like manner as if such taxes, assessments, and other charges, had been duly returned delinquent by a town or district collector. The collectors' books so delivered to the county collector, by the county clerks, shall, for all purposes, in all subsequent proceedings, be used in the same manner, and have the same force and effect as if said books were delivered to the town or district collectors, and duly returned by them, as provided by law. When any injunction restraining the collection of taxes shall be dissolved after the tax books shall have been returned to the county collector, such taxes or the portion thereof, upon which such injunction shall have been dissolved, shall be paid to the county collector, who shall have the same power and shall proceed in the same manner for the collection of such taxes, as though the same or such portion thereof had never been enjoined. [As amended by act approved May 29, 1879. In force July 1, 1879. L. 1879, p. 248.]

The clerk's certificate to delinquent list should be made on the day advertised for the sale. *Judson vs. Glos*, 249—82.

Advertisement for judgment and sale — Proviso as to certain cities.] Section 182. At any time after the first day of April next after such delinquent taxes and special assessments on lands and lots shall become due, the collector shall publish an advertisement, giving notice of the intended application for judgment for sale of such delinquent lands and lots, in a newspaper printed and published in his county, if any such there be, and if there be no such paper printed and published in his county, then in the nearest newspaper in this State to the county seat of such county. Said

advertisement shall be once published at least three weeks previous to the term of the County Court at which judgment is prayed, and shall contain a list of the delinquent lands and lots upon which the taxes or special assessments remain due and unpaid, the names of owners, if known, the total amount due thereon, and the year or years for which the same are due. Such collector shall give notice that he will apply to the County Court at the..... term thereof, for judgment against said lands and lots for said taxes, special assessments, interest and costs, and for an order to sell said lands and lots for the satisfaction thereof; and shall also give notice that, on the.....Monday next succeeding the day fixed by law for the commencement of such term of the said County Court, all the lands and lots for the sale of which an order shall be made, will be exposed to public sale at the building where the County Court is held in said county, for the amount of taxes, special assessments, interest and cost due thereon; and the advertisement published according to the provisions to this section shall be deemed to be sufficient notice of the intended application for judgment and the sale of lands and lots under the order of said court. Where the publisher of any paper that may have been selected by the collector shall be unable or unwilling to publish such advertisement, the collector shall select some other newspaper, having due regard to the circulation of such paper. **Provided**, that in cities having a population of one hundred thousand or more by the last preceding census of the United States or of this State separate advertisement may be made giving notice of an intended application for judgment and for an order of sale on account of delinquent special assessments at any time after the first day of August next after such special assessments shall have become delinquent, the procedure in such case to be in all other respects except as to the time of making advertisement, application for judgment and sale, the same as in the case of delinquent general taxes." [As amended by act approved June 28, 1919. L. 1919 p. 766.]

The making and filing of delinquent list and publication of notice is essential to give court jurisdiction. *P. vs. Dragstron*, 100—286.

Notice by collector of his application to County Court for judgment for taxes is necessary to give court jurisdiction. It takes the place of process and unless the party appears at the application, judgment is void. *Fortman vs. Ruggles*, 58—207.

Notice published, if insufficient to confer jurisdiction, is not amendable. Even though the land could not be identified from the description therein, where the owner appeared at the application and failed to raise point, he waived it. *Nicholes vs. P.*, 165—502.

Waiver of defects in publication notice, is application for judgment for delinquent taxes, results from appearing and filing objections to application for judgment of sale. *R. Co. vs. P.*, 170—230; *P. vs. Smith*, 281—538.

Filing general appearance operates as waiver of defect in publication notice. *Nicholes vs. P.*, 165—503; *P. vs. Smith*, 281—538.

In application for judgment for delinquent taxes advertisement is in nature of summons. Defect therein is waived by party making personal appearance and defending on the merits. *Mix. vs. P.*, 106—425.

In proceeding for judgment of sale for delinquent taxes, finding of court that notice sent in due time presumes that court had evidence thereof before it. *Kirchman vs. P.*, 159—321 (1896).

The omission to state that judgment will be applied for against lands or lots named in delinquent list renders advertisement defective. *Gage vs. P.*, 188—95.

Upon review in direct proceeding, variance between notice and delinquent list as to matters of essential description, is fatal. *Gage vs. P.*, 188—94.

A notice where there is variance between warrant it describes and warrant as described in judgment record, is defective. *Gage vs. P.*, 188—95.

The notice must give a description of delinquent land sufficient for purposes of identification. *Hook vs. P.*, 177—633. Otherwise the court has no jurisdiction to render judgment against the land. *Pitchering vs. Lomas*, 120—289.

The year for which land was forfeited need not be stated in the advertisement and application for judgment for back taxes. *Pike vs. P.*, 84—80.

Collector should fill first blank with term to which he will make application, and fill second blank with Monday on which sale is expected to be made. And if from any cause such application should not be made or the judgment recovered, he may apply to any subsequent term. *Beers vs. P.*, 83—488.

Notice of application for judgment for taxes "for 1871, and previous years," where there were no taxes for previous years, "previous years" being merely formal, sufficiently definite. Notice may be proved by newspaper containing it. *Durham vs. P.*, 67—144.

Abbreviations, letters and figures, used in advertisement, clearly conveying meaning, e. g., "Lt" for lot, "Bk" for block, "Pt" for part, "c," "ct," "cts," for cent or cents, "m" for mill. "Tx" for tax, "Vl" for valuation, do not vitiate it. *Jackson vs. Cummings*, 15—449.

Notice of application for judgment should include notice of application for order of sale, and its omission will vitiate sale. *Charles vs. Waugh*, 35—315.

Strict observance of statutory provision that sale for taxes held second Monday after first day of term at which judgment rendered, was formerly required. *Polk vs. Hill*, 15—130.

Collector's report and notice of application of sale must be made substantially in compliance with statute to give court jurisdiction. *Spellman vs. Curtinius*, 12—409.

Sale must be made second Monday from first day of term at which judgment had and sale on different day from that prescribed, or to which sale has

been continued, void; and deed thereon confers no title. But owner cannot object to sale unless all taxes then paid. *Hope vs. Sawyer*, 14—254, overruling *Bestor vs. Powell*, 7—(2 Gil.), 119. Same rule followed. *Es-sington vs. Neill*, 21—139; *Hardin vs. Crate*, 60—215.

Under former law, day for sale was second Monday succeeding first day of judgment term, but sale might be made on second Monday succeeding adjournment. This was changed by Rev. Stat. 444, Sec. 47, to fourth Tuesday next succeeding commencement of term. *Bestor vs. Powell*, 7—(2 Gil.), 119.

The fact that collector's advertisement of delinquent lands is called a "list" instead of "lists," is unimportant. *People vs. Stephens*, 261—121.

Collector is only required to state name of owner if known to him, and while term "Wm. Gross, Est." is not name of owner, it will be presumed in using such term, collector did not know name of owner. *People vs. Smith*, 266—344.

Published delinquent list need not separate the total tax into its component items. *People vs. Smith*, 266—344.

If description of railroad property in delinquent list would be sufficient to enable a competent surveyor to find and identify the property the description complies with the law. *People vs. Wabash R. Co.*, 267—30; *People vs. R. Co.*, 271—553.

Penalties should not be added to taxes the treasurer refuses to accept. *People vs. R. Co.*, 270—477.

The purpose of describing land and of stating owner's name in delinquent list and in publication notice is that owner may be furnished with all the necessary means for the identification of his property. *People vs. Chicago Title & Trust Co.*, 273—203.

The owner of legal title is "owner" referred to and word "trustee" need not be added to owner's name. *People vs. Chicago Title & Trust Co.*, 273—203.

Name of owner should be given in publication notice when known to the collector and collector need not make search of the record or an inquiry to ascertain the owner's name. *People vs. Smith*, 281—538.

Proceedings to collect delinquent tax is in nature of action at law in which publication under Sec. 182 is process or summons. *People vs. Campbell*, 204 A. 226.

Proceedings against real estate for personal tax.] Section 183.

When it becomes necessary to charge the tax on personal property against real property, the county collector shall select for that purpose some particular tract or lots of real property owned by the person owning such personal property tax; and in his advertisement for judgment and sale, shall designate the particular tract or lots of real property against which such personal property tax is charged, and in the list filed for judgment, the same facts shall be shown, and the court shall take cognizance thereof, and give judgment against such tract or lots of real property, for such personal property tax. See Section 255.

Figures, etc., used — Advertisement, etc.] Section 184. In all advertisements for the sale of lands and lots for taxes or special assessments, and in entries required to be made by the clerk of the court or other officer, letters, figures and characters, may be used to denote townships, ranges, sections, parts of sections, lots or blocks, or parts thereof, the year or the years for which the taxes were due, and the amount of taxes, special assessments, interest and costs; and the whole of the advertisement shall be contained in one edition of such newspaper and its supplement, if such supplement is necessary: Provided, that nothing contained in this section shall prevent the county collector from subsequently advertising and obtaining judgment on lands or lots that may have been omitted through no fault of the collector, or that may have been erroneously advertised or described in the first advertisement; and, provided, further, that in cities having a population of one hundred thousand or more by the last preceding census of the United States or of this State the advertisement for the sale of lands and lots for special assessments may be made separately from the advertisement for the sale of lands and lots for taxes and on a different date and edition of such newspaper. (As amended by Act Approved June 28, 1919. L. 1919, p. 766.)

When application for judgment made, etc.] Section 185. All application for judgment and order of sale for taxes and special assessments on delinquent lands and lots shall be made at the June term of the County Court except in the case of special assessments in cities having a population of one hundred thousand or more by the last preceding census of the United States or of this State. If from any cause the court shall not be holden at the term at which judgment is prayed, the cause shall stand continued, and it shall not be necessary to readvertise the list or notice required by law to be advertised before judgment and sale, but at the next regular term thereafter the court shall hear and determine the matter; and if judgment is rendered the sale shall be made on the Monday specified in the notice as provided in section 182, such Monday to be fixed by the county collector in the notice. If for any cause the collector is prevented from advertising and obtaining judgment at said term it shall be held to be legal to obtain judgment at any subsequent term of said court; but if the failure arises by the county collector's not complying with any of the requirements of this Act, he shall be held on his official bond for the full amount of all taxes and special assessments charged against him: Provided, that any such failure

on the part of the county collector shall not be allowed as a valid objection to the collection of any tax or assessment, or to a rendition of a judgment against any delinquent lands or lots included in the application of the county collector; and, provided, further, that on the application for judgment at such subsequent term it shall not be deemed necessary to set forth or establish the reasons of such failure: And, provided, further, that in counties where Probate Courts have been or may hereafter be established it shall be lawful to make such application for judgment and order of sale to the May term of the County Court. In cities having a population of one hundred thousand or more by the last preceding census of the United States or of this State, no application for judgment against any lot, block, tract or parcel of land for unpaid special taxes or special assessments shall be made before the September term of court. The application for judgment upon delinquent special assessments or special taxes in each year shall include only such special assessments, special taxes, or installments thereof, and interest, as shall have been returned as delinquent to the county collector on or before the first day of August in the year in which said application is made, and marked on the general tax books of the county collector on or before the tenth day of March of the same year. Provided, that such judgment of sale shall include interest on matured installments up to the date of such judgment. (As amended by Act Approved June 28, 1919. L. 1919, p. 766.)

Court is not required to enter judgment against all of the property at the same time but may enter judgment against part of the property at one term and remainder at later term, and no further application or notice is required. *People vs. Noonan*, 276—430.

The County Court has jurisdiction to render judgment at term subsequent to June if application was made at such term, but through mistake the essential jurisdiction had not then been acquired. *R. Co. vs. P.*, 189—122.

Under former law, the collector was not compelled to make application for judgment at May term, but might make it at July term. *P. vs. Nichols*, 49—517.

Notice to Be By County Collector Five Days Before Sale.]

Section 186. The county collector shall at least five days before the date of sale of delinquent lands or lots upon which the taxes or special assessments remain due and unpaid, send a notice by registered mail to the owner, if known, or if not known, to the person shown by the collector's book to have paid the taxes or special assessments on such lands or lots for the previous year, giving notice of application for judgment and sale of such lands or lots, and date of sale, describing the lands or lots and the amount of taxes or special

assessments together with interest and costs, due thereon. For such notice the county collector shall charge twenty (20) cents to be taxed and collected as costs. [As amended by act filed July 11, 1919. L. 1919, p. 763.]

(This section prior to the amendment of 1919 was worded and constructed as follows: The printer, publisher, or financial officer or agent of the newspaper publishing the list of delinquent lands and lots, shall transmit, by mail or other safe conveyance, to the collector, four copies of the paper containing said list¹, to one of which copies he shall attach his certificate², under oath³, of the due publication of the delinquent list for the time required by law (which copy shall be presented by the collector to the county court at the time judgment is prayed), and said copy shall be filed as a part of the records of said court⁴. Upon receipt of said papers, and on demand being made, the collector shall pay to the printer the amount of the fees allowed by law for publishing said list and notice; and it shall be his duty to file one copy of said paper in his office, and deliver one copy to the auditor, and one copy to the state treasurer, who shall file and safely preserve them in their respective offices.⁵)

1. Copy of Printed Notice:

Filing copy of printed notice of application for judgment is prerequisite to judgment for delinquent taxes. *P. vs. Owners, etc.*, 82—408.

Published list, though filed, is within control of collector until application for judgment. *McChesney vs. P.*, 178—544.

2. Printer's Certificate:

Certificate must show what relation person making it bears to newspaper. *McChesney vs. P.*, 174—49.

The seal of a corporation publishing a delinquent tax list need not be affixed to the certificate of publication signed by its president, the act being an individual and not a corporate act. *Hertig vs. P.*, 159—237 (1896); *Bass vs. P.*, 159—207; *Kirchman vs. P.*, 159—321.

Form of affidavit of publisher of notice of delinquent lands. *Fisher vs. People*, 84—491.

If record shows that only certificate of publication of notice of application for judgment is one published with notice as a continuation of the advertisement it confers no jurisdiction on court, although judgment recites that due notice was given. *Senichka vs. Lowe*, 74—274.

Certificate of publication, signed in name of publisher by agent, authority of agent not appearing was insufficient. *Fox vs. Turtle*, 55—377.

Certificate at foot of list, that the foregoing was duly published in the "Peoria Democratic Press," was sufficient proof of publication in newspaper, as it will be presumed that was a newspaper. *Jackson vs. Cummings*, 15—449.

A collector is not bound to make return five days before sitting of court. It is

sufficient if returned on or before the first day of session. *Jackson vs. Cummings*, 15—449.

Certificate of publication of collector's notice of intention to apply for judgment for delinquent taxes may be amended if done at some term and upon notice to the opposite party. *Dunham vs. Chicago*, 55—357.

The certificate of publication of the delinquent tax list is sufficient, on application for judgment, where it literally follows the statute; and no venue need be attached either to such certificate or to the accompanying oath. *Bass vs. P.*, 159—207 (1896).

3. Oath.

The jurat need not show form of affirmation. *Colvin vs. P.*, 166—82.

The County Court will take judicial notice that a notary public before whom a certificate of the publication of the delinquent list is sworn to is a notary of the county, no venue being stated in the jurat. *Hertig vs. P.*, 159—237 (1896).

4. Filing Copy and Certificate:

Filing of copy of newspaper and certificate, as required by section above, must be with clerk of County Court. But certificate of filing is amendable. *McChesney vs. P.*, 174—50.

Copies of newspapers and certificates of the publishers must be filed in the office of the clerk of the County Court of Cook County, and it renders the judgments void that they were filed in the office of the clerk of the County of Cook. *Glos vs. Woodard*, 202—480; *Glos vs. Hanford*, 212—261; *Nowlin vs. People*, 216—543; *McCraney vs. Glos*, 222—628.

Absence of file mark from delinquent list waived by not specifying such irregularity by way of objection. *Colvin vs. P.*, 166—83.

6. Fees for Publication:

If printer elects to publish delinquent list he must do work for amount allowed by law, which under Sec. 186 and Sec. 22 of Fees and Salaries Act, construed together, must be amount of fees allowed by Sec. 22. *County of Lake vs. Lake County Pub. & P. Co.*, 280—243.

Error in advertisement.] Section 187. In all cases where there is an error in the advertised list, the fault thereof being the printer's, which prevents judgment from being obtained against any tracts or lots, or against all of said delinquent list, at the time stated in the advertisement that judgment will be applied for, the printer shall lose the compensation allowed by this act, for such erroneous tracts or lots, or entire list, as the case may be.

Delinquent list — Form.] Section 188. The collector shall transcribe into a book, prepared for that purpose, and known as the tax, judgment, sale, redemption, and forfeiture record, the list of delinquent lands and lots, which shall be made out in numerical order, and contain all the information necessary to be recorded, at least five days before the commencement of the term at which application for judgment is to be made; which book shall set forth

the name of the owner, if known; the proper description of the land or lot, the year or years for which the tax or special assessments are due; the valuation on which the tax is extended; the amount of the consolidated and other taxes and special assessments; the costs and total amount of charges against such land or lot. Said book shall also be ruled in columns, so as to show the withdrawal of any special assessments from collection, the amount paid before rendition of judgment; the amount of judgment, and a column for remarks; the amount paid before sale and after the rendition of said judgment, the amount of the sale, amount of interest or penalty, amount of cost, amount forfeited to the State, date of sale, acres of part sold, name of purchaser, amount of sale and penalty, taxes of succeeding years, interest and when paid, interest and cost, total amount of redemption, date of redemption, when deed executed, by whom redeemed, and a column for remarks, or receipt of redemption money. [As amended by act filed June 28, 1917. L. 1917, p. 658.]

Form prescribed for the tax judgment sale, redemption and forfeiture record is mandatory and must be strictly followed. *Wilson vs. Glos*, 266—392.

If delinquent list describes property of railroad company in county in form prescribed by Sec. 42 and description is such as to enable competent surveyor to locate property, the delinquent list need not separately describe portion of railroad track in each taxing district. *People (ex rel.) vs. R. Co.*, 271—553.

The judgment record, but not the delinquent list, should show in separate columns the amount of the judgment, the amount of interest and penalty and the amount of costs as to each item. *People (ex rel.) vs. R. Co.*, 281—507.

Section does not require amount of penalty to be stated in delinquent list prior to rendition of judgment. *People vs. Wabash R. Co.*, 282—218.

Variance in title of this book is immaterial. *McChesney vs. P.*, 171—270.

Date of filing delinquent list is not required to be set forth in the list or in such book. If bill of exceptions shows that it was filed in time it is sufficient. If required, statement could be added at hearing under Sec. 191, *infra*. *Mix vs. P.*, 106—425.

If delinquent list is filed on July 4th, and first day of next term is July 9th, list is filed in time. *Prior vs. P.*, 107—628.

Dismissal of application for judgment for tax, not on merits, does not bar subsequent application for judgment for same tax. Where lists had not been filed five days to June term, it was proper to render judgment at August term, as court had jurisdiction so to do at any regular term after April. *Stillwell vs. P.*, 49—45.

Collector's report must state for what year taxes were assessed. Omission of such statement will invalidate all proceedings on such report. *Pickett vs. Hartsock*, 15—279.

Collector's report to County Court is jurisdictional, and must follow form prescribed by statute or no title will pass by sale. The list should state what portion was State and what portion county. *Morrill vs. Swartz*, 39—108.

Delinquent list need not show valuation of land for year for which back tax is claimed. The mere fact that the description of the land in the record is uncertain, so long as it can be identified, will not invalidate judgment for delinquent taxes. *Law vs. P.*, 84—142.

Where there was a column in the delinquent list headed, "In whose name assessed," names of owners of land indicated therein were sufficiently shown. *Halsey vs. P.*, 84—89.

Collector's list of delinquent lands is prima facie ground for judgment against such lands. Officers are presumed to have done their duty. *Durham vs. P.*, 67—414.

Under Revised Statutes of 1845, Chap. 89, Secs. 46, 47, a formal heading for delinquent list was essential, and defect therein vitiated list and proceedings thereon. It must be in substantial compliance. *Morgans vs. Camp*, 16—175.

Proper listing of realty on which taxes are delinquent is essential to validity of all subsequent proceedings. Failure of officers to preserve books showing listing of realty does not relieve party claiming title under deed from proving listing by best evidence attainable. *Graves vs. Bruen*, 11—431.

Proceedings to collect delinquent taxes is in nature of proceedings at law, and the judgment, sale, redemption and forfeiture record of delinquent lands serves office of declaration. *People vs. Campbell*, 204 A. 226.

The collector is entitled to the fee for publication after he has gone to expense of having the list printed for publication, and the taxpayer cannot avoid it by paying tax before actual publication. But the collector should receipt for what was offered and change lists to cover the balance. *Thatcher vs. P.*, 79—597.

Section has no application to a proceeding in equity to foreclose a tax lien on property forfeited to the State. *People vs. Cant*, 260—497.

Tax may be paid before sale.] Section 189. Any person owning or claiming lands or lots upon which judgment is prayed, as provided in this act, may, in person or by agent pay the taxes, special assessments, interest and costs due thereon, to the county collector of the county, in which the same are situated, at any time before sale. [As amended by act approved May 29, 1879. In force July 1, 1879. L. 1879, p. 249.]

Payments reported — List corrected.] Section 190. On the first day of the term at which judgment on delinquent lands and lots is prayed, it shall be the duty of the collector to report to the clerk all the lands or lots as the case may be, upon which taxes and special assessments have been paid, if any, from the filing of the list mentioned in section one hundred and eighty-eight up to that time; and the clerk shall note the fact opposite each tract upon which such payments have been made. The collector assisted by the clerk, shall compare and correct said list, and shall make and subscribe an affidavit which shall be as nearly as may be, in the following form:

I....., collector of the county of....., do sol-

emly swear (or affirm, as the case may be,) that the foregoing is a true and correct list of the delinquent lands and lots within the county of.....upon which I have been unable to collect the taxes (and special assessments, interest, and printer's fees, if any,) charged thereon, as required by law, for the year or years therein set forth; that said taxes now remain due and unpaid, as I verily believe.

Said affidavit shall be entered at the end of the list, and signed by the collector. [As amended by act approved May 29, 1879. In force July 1, 1879. L. 1879, p. 249.]

Filing of delinquent list is sufficient if book containing it is delivered into custody of clerk of County Court within time required by law. *McChesney vs. P.*, 178—546.

Collector required to file publisher's certificate and copy of advertisement, with his report, with court. Such filing was essential to validity of title. *Thompson vs. McLaughlin*, 66—407.

Affidavit of collector need not necessarily state application is for delinquent taxes and assessments both, where the application is for judgment for one alone. *Chicago, etc., R. Co. vs. P.*, 83—467.

Affidavit is valid, although it does not mention taxes, but mentions only special assessments, because it will be presumed general taxes were paid. *Prout vs. P.*, 83—154.

Affidavit to delinquent list is not jurisdictional. *R. Co. vs. P.*, 174—82.

Failure of town collector to make and return an affidavit showing what lands were delinquent, does not affect jurisdiction of court to render judgment for taxes; and the delinquent list reported by the county collector to the county clerk, under oath, on the first day of the term, is *prima facie* evidence of delinquency. *Fisher vs. P.*, 84—491.

It could never have been designed that the whole taxes and assessments should be defeated by the mere omission of a tract of land or a lot from this list. *Ry. Co. vs. People*, 83—467.

Collector's affidavit was sufficient where from description property could be located by competent surveyor without extrinsic aid. *Law vs. P.*, 80—268.

Sec. 188 and Sec. 190, *infra*, give the court jurisdiction to give judgment on application of clerk, and they must be substantially complied with. Thus omission of valuation from list of delinquent land and lots, and from affidavit of conclusion, "that said taxes now remain due and unpaid, as I verily believe," is fatal. *People vs. Otis*, 74—384.

The General Revenue Act of 1872 necessarily worked a repeal of all prior conflicting laws, whether found in general acts or special city charters. Thus the old law providing that affidavits to delinquent list (Sec. 190) should be made by commission, is repealed. *Law vs. People*, 80—268.

Judgment—Proceeding by court.] Section 191. The court shall examine said list,¹ and if defense (specifying, in writing, the particular cause of objection)² be offered by any person interested³ in any of said lands or lots, to the entry of judgment against the same, the court shall hear and determine the matter in

a summary manner,⁴ without pleadings,⁵ and shall pronounce judgment as the right of the case may be.⁶ The court shall give judgment⁷ for such taxes and special assessments and penalties as shall appear to be due and such judgment shall be considered as a several judgment against each tract or lot,⁸ or part of a tract or lot, for each kind of tax or special assessment included therein; and the court shall direct the clerk to make out and enter an order for the sale of such real property against which judgment is given, which shall be substantially in the following form:⁹

Whereas, due notice has been given¹⁰ of the intended application for a judgment against said lands and lots, and no sufficient defense having been made, or cause shown, why judgment should not be entered against said lands and lots, for taxes (special assessments, if any), interest, penalties and costs due and unpaid therein for the year or years herein set forth, therefore it is considered by the court that judgment be and is hereby entered against the aforesaid tract or tracts, or lots of land, or parts of tracts or lots, (as the case may be), in favor of the People of the State of Illinois, for the sum annexed to each¹¹, being the amount of taxes (and special assessments, if any), interest, penalties and costs due severally thereon; and it is ordered by the court that the said several tracts or lots of land, or so much of each of them as shall be sufficient¹² to satisfy the amount of taxes (and special assessments, if any), interest, penalties and costs¹³ annexed to them severally, be sold as the law directs.

Said order shall be signed by the judge.¹⁴ In all judicial proceedings of any kind, for the collection of taxes and special assessments, all amendments may be made which, by law, could be made in any personal action pending in such court, and no assessment of property or charge for any of said taxes shall be considered illegal on account of any irregularity in the tax lists or assessment rolls, or on account of the assessment rolls or tax lists not having been made, completed or returned within the time required by law, or on account of the property having been charged or listed in the assessment or tax list without name,¹⁵ or in any other name than that of the rightful owner; and no error or informality in the proceedings of any of the officers connected with the assessment, levying or collecting of the taxes, not affecting the substantial justice of the tax itself, shall vitiate or in any manner affect the tax or the assessment hereof; and any irregularity or informality in the assessment rolls or tax lists, or in any of the proceedings connected with the assessment or levy of such taxes, or any omission or defective act of any officer or

officers connected with the assessment or levying of such taxes, may be, in the discretion of the court, corrected, supplied and made to conform to law by the court, or by the person (in the presence of the court) from whose neglect or default the same was occasioned.¹³

Provided, that where separate advertisement and application for judgment and order of sale is made on account of delinquent special taxes or special assessments in cities having a population of one hundred thousand or more by the last preceding census of the United States or of this State the procedure shall in all respects be the same as in this section prescribed, except that there shall be two separate judgments and orders for sale, the first on account of delinquent general taxes and the second on account of delinquent special taxes and special assessments. [As amended by act approved June 28, 1919. L. 1919, p. 766.]

1. The courts shall examine said list:

To sustain a judgment against property for taxes, it is sufficient to introduce in evidence the sworn report of the list of delinquent lands, together with proof of the publication thereof and notice of application. This makes a prima facie case. *People vs. C., I. & St. L. Ry. Co.*, 243—221.

The collector's return of the delinquent list, and the filing of the same, with the statutory notice and proof of publication, prima facie entitles the collector to judgment, and the burden is cast upon the objector to show that an irregularity complained of exists. *Moore vs. P.*, 123—645; *People vs. Wabash R. Co.*, 281—311.

Where court has before it a collector's report properly headed, giving description of land, amount of tax due thereon, and for what year, proper notice having been given, it has case for judgment. *Spellman vs. Curtenius*, 12—409.

Under old law, legislature may provide that collector's application for judgment shall be prima facie proof of facts therein stated. *Andrews vs. P.*, 75—605.

Collector's application for judgment is prima facie evidence of assessment and levy of tax, and that it is due and unpaid. *Chiniquy vs. P.*, 78—570.

The collector's sworn report of the list of delinquent lands, together with proof of publication thereof and notice of application for judgment, make a prima facie case, and judgment is to be entered thereon, unless good cause is shown to the contrary; if there be any valid objections not appearing on the face of said delinquent list, notice and proof of publication, it is for the land owner to make them appear. In this respect there is no difference between special assessments and other taxes authorized by law. *P. vs. Givens*, 123—352; *People vs. R. Co.*, 249—100.

On application for judgment for taxes, a prima facie case is made by the collector's sworn report of delinquent lands, together with proof of publication thereof and notice of application. *Kirchman vs. P.*, 159—265 (1896); *People vs. Wabash R. Co.*, 281—382.

Collector's report and proof of notice of publication for judgment makes a prima facie case. *Scott vs. P.*, 142—291 (1892); *Mix vs. P.*, 81—118; *People vs. Jones*, 277—353.

Delinquent tax list and proof of notice of application for judgment makes a case for the State. *P. vs. C. and A. R. Co.*, 140—210 (1892).

The collector's return (Sec. 172) is sufficient, when un rebutted, to require rendition of judgment of sale against lands to pay back taxes. *Hosmer vs. People*, 96—58.

On application for judgment for delinquent taxes, collector not bound to prove that the land was regularly assessed, as it will be presumed the assessor and all other officers did their duty. *Carrington vs. People*, 195—484.

On application for judgment for delinquent taxes, collector not bound to prove legality of tax. Presumption that officers do their duty applies. Defendant has burden of proving illegality. *Mix vs. P.*, 86—312.

Notwithstanding no record of town meeting was introduced, upon application for judgment for unpaid taxes presumption favors regularity of tax levy. *R. Co. vs. P.*, 174—83.

The presumption is that a tax was legally levied, and the burden of proof to establish the contrary is upon the tax-payer. *Ry. Co. vs. People*, 212—551; *People vs. Martin*, 283—380.

Burden of showing invalidity of appropriation ordinance is upon objecting party. *P. vs. R. Co.*, 189—399.

Objector is required to overcome prima facie case made by collector. *People vs. R. Co.*, 247—506, 508.

Delinquent list makes a prima facie case entitling collector to judgment. *People vs. Wabash R. Co.*, 256—626, 628.

Upon application for judgment the presumption is that a tax to pay bonded indebtedness was lawfully excluded in reducing tax rate. *People vs. Wabash R. Co.*, 256—626.

County collector's report need not show nature of the warrants authorizing collection of special assessment. *People vs. Jones*, 277—353.

2. And if defense (specifying, etc.) be offered, etc.:

(A) Appearance and objections:

Special appearance upon application for judgment must be restricted to jurisdictional objections. *McChesney vs. P.*, 178—548.

Court may enter rule that all objections shall be filed before given time, and may refuse to consider objections filed after that time. *Hess vs. P.*, 84—247.

Where there is but one application for judgment by the taxing power, and all objections are made by the same property owner, the objections may properly be joined, although several taxes are involved. *People vs. R. R. Co.*, 237—362.

Objection to application for judgment should specify particular cause therefor. *P. vs. R. Co.*, 189—398.

The objection to tax must, under Sec. 191, Chap. 120, specify the particular cause. *R. Co. vs. P.*, 155—276.

Necessity for written objection to tax, as required by section above, is waived where argued in court below on its merits. *R. Co. vs. P.*, 184—177.

Exemption of personal property from taxation as being without situs in this State may be urged upon application for judgment of sale. *Maxwell vs. P.*, 189—554.

Evidence is not admissible which does not come within particular ground of objection specified. *People vs. Huey*, 277—561.

Rule requiring objection to be specific is to enable opposing counsel as well as the court, to ascertain the real objection without argument or explanation, to facilitate a proper hearing on the question at issue and not to hamper the court in the trial. *People vs. R. Co.*, 281—500.

Where objection is sufficiently clear to enable court to understand what tax is objected to and on what ground, on introduction of evidence tending to sustain the objection, court should allow amendment making objection more specific. *People vs. R. Co.*, 281—500.

Rule as to filing additional objections does not apply to amendments made for greater clearness. *People vs. Wabash R. Co.*, 282—218.

If any objection states a legal ground of defense it is error for the court to strike it from the files and refuse to the tax-payer a hearing and an opportunity to prove the fact alleged. *People v. Bridge Co.*, 287—248.

(B) Effect of judgment as res adjudicata of all objections that were urged or which might have been urged.

(1) When the party appears:

Objections raised before judgment and overruled become res judicata, and cannot be urged against tax title. *Frew vs. Taylor*, 106—159.

When owner contests application for judgment, objections then presented become res adjudicata by judgment. He cannot again urge them on proceedings for collecting such taxes as back taxes. *Biggins vs. P.*, 106—270.

The party appearing, objections not specifically raised are waived. *Fisher vs. Chicago*, 213—268.

Having appeared in the County Court, the tax-payer waived objections. *Neff vs. Smith*, 111—100.

Where a tax-payer appears before the County Court and makes objections he waives all others. *Karnes vs. People*, 73—274.

Where general appearance is made in County Court by owner to present objections to judgment, all objections must be brought forward. *Warren vs. Cook*, 116—199.

Appearance by owner and objection to judgment is waiver of defect or lack of notice. *Frew vs. Taylor*, 106—159.

If a party appears in the County Court and resists the entry of judgment for taxes, this will cure defects in the publication of the delinquent list and the notice of application for judgment. He should have raised these points before County Court. Too late on appeal. *Cairo, etc., R. Co., vs. Mathews*, 152—153 (1891).

Waiver of defects in notice results from appearing generally, *Zeigler vs. P.*, 161—532.

Having appeared in the County Court and objected to the validity of the tax, and judgment having been rendered against him as owner, and having failed to appeal, a tax payer cannot attack the validity of such judgment, as by evidence that he did not own the property. *Harding vs. People*, 202—122.

Objections not urged in the court below, as to the sufficiency of notice, cannot be availed of in the Supreme Court. *Young vs. P.*, 155—247 (1895).

Defects in publication notice and application for judgment in regard to names of owner and description of property are waived by general appearance and filing objections to merits of tax. *People vs. Smith*, 281—538.

(2) When the party does not appear:

Search through tax judgment records by one familiar therewith, and failure to find appearance, is evidence of no appearance. *Gage vs. Lyons*, 138—590 (1891).

Judgment against land for taxes is not conclusive on owner as to liability of land for taxes unless he appears and contests application. *Belleville Nail Co. vs. P.*, 98—399.

Judgment for taxes does not warrant the presumption that the owner appeared at the time and place of the application for judgment and objected to the rendition. *Gage vs. Nichols*, 135—128 (1890).

Burden of proof is on the party claiming property under a judgment for taxes to show that the other party is estopped by the judgment. *Gage vs. Nichols*, 135—128 (1890).

Burden is on holder of tax title to show that land owner appeared and contested entry of judgment, in order to preclude him from showing an illegal tax. *Gage vs. Goudy*, 141—215 (1892).

Objection may be made by collateral attack where judgment for taxes includes illegal taxes or costs and land owner does not appear and contest the entry of judgment. *Gage vs. Goudy*, 141—215 (1892).

Owner is not concluded by judgment against land for taxes unless he appears and defends. If he defends he is concluded as in other cases. *Gage vs. Bailey*, 102—11.

Objections to drainage tax, such as that the aggregate of the assessments would produce more money than the debt of the district which they were needed to pay and that the figures given in the assessment rolls of benefits did not show that they referred to dollars and cents, are not to be considered on objection to proceeding under Sec. 253, *infra*, as those should have been raised at application for judgment. *P. vs. Weber*, 164—417.

3. By some person interested:

Party objecting to rendition of judgment for sale of delinquent lands must show interest in lands. *P. vs. Quick*, 87—435.

A railroad in whose name a tax was assessed may object to the tax. *Railroad Co. vs. People*, 218—463.

One objecting to taxes not assessed in his name must show his interest. *People vs. R. Co.*, 248—440; *P. vs. White*, 286—259.

One objecting to tax on land assessed in another's name must prove his interest and an agent cannot object in his own name to taxes on principal land. *People vs. Robert White & Co.*, 286—259.

4. Summary manner:

Change of venue not allowed on application for judgment against delinquent lands. *Mix vs. P.*, 86—312.

5. Without pleadings:

Not necessary to plead prior proceeding of the same kind undisposed of. *Andrews vs. P.*, 75—605.

6. And shall pronounce judgment as of right the case ought to be:

Under above section the County Court has power, in reviewing an assessment on application for judgment, to reduce the rate for school purposes to that allowed by statute. *Spring Valley Coal Co., vs. P.*, 157—543 (1895).

Where the illegal can be separated from the legal, the whole tax is not void, but judgment should be rendered for tax legally assessed. *Allen vs. R. R. Co.*, 44—85; *P. vs. Nichols*, 49—517; *Ry. Co. vs. People*, 212—518; *People vs. Chicago & N. W. R. Co.*, 249—170; *People vs. Chicago & Alton R. Co.*, 273—452.

Judgment cannot be rendered for taxes part of which are illegal, unless legal portion can be ascertained and separated from illegal portion. *People vs. R. Co.*, 249—97.

7. The court shall give judgment:

Refusal of judgment for taxes is not a bar to a subsequent application for judgment unless the merits were involved. *P. vs. C. and A. R. Co.*, 140—210 (1892).

Where court has jurisdiction and there is trial on merits, judgment denying application for judgment for tax is bar to subsequent application for judgment for same tax. *Graceland C. Co. vs. P.*, 92—619.

Fee of clerk for entry of judgment of sale may be included in such judgment, on the theory that entry of judgment is simultaneous with its rendition. *McChesney vs. P.*, 171—270.

8. Several judgment against each tract or lot, etc.:

Judgment for delinquent taxes is invalid where it is given on a schedule which does not set out the several amounts due on the property. It must be certain in amount. *Gage vs. People*, 213—347; *People vs. Chicago Tr. Co.*, 266—224.

Judgment against "property" of objector is substantial compliance with statute. *McChesney vs. P.*, 178—548.

The judgment must be against the tracts or lots of lands for the sum annexed to each. The form of judgment here held insufficient. *McChesney vs. P.*, 174—51.

The judgment for taxes should be several as against each particular tract of land ordered sold. *Olcott vs. State*, 10—481.

9. Form of judgment generally:

The form of judgment prescribed by this section must be substantially followed and the judgment must show a list preceding the judgment in the "judgment sale and redemption record" of the County Court, which list should show the amount of judgment against each tract, otherwise the judgment is fatally defective. Where the judgment did not properly refer to such list by use of the word "aforesaid" but refers to a schedule attached to and following the judgment, and that schedule does not show the amount for which judgment was entered, it was defective. *Gage vs. People*, 213—410.

Judgment for too large amount is void and no title passes by sale under it, so held as to judgment prior to amendment of 1879 to Sec. 221. *Harland vs. Eastman*, 119—22; *Gage vs. Williams*, 119—563.

- It is to be presumed that the collector on application for judgment against delinquent lands did his duty. An omission of judgment in form against the lands, and only an order that the lands be sold for the amount of taxes assessed against each separate tract, is substantially in form and sufficient. *Mix vs. P.*, 81—118.
- A judgment for delinquent taxes must, in terms, find the sum due. *Chickering vs. Faile*, 38—342.
- The proceedings is in rem and a judgment in personam and execution against defendant, erroneous. *Pidgeon vs. P.*, 36—249.
- In case of judgment against owners and land, in proceedings against land only under statute, part against owners is surplusage and void, but part against land is valid. *Chestnut vs. Marsh*, 12—173.
- The judgment need not state name of present owner of land, its valuation, or county where it lies, where such facts appear from record. *Spellman vs. Curtenius*, 12—409.
- A judgment reciting that "this matter coming on further to be heard upon objections of C, trustee of estate of A, deceased, and the court being fully advised in the premises, it is ordered by the court that the objections of the said objector be and the same are hereby overruled, and judgment and order of sale are hereby entered against property of said objector" is not sufficient. *People vs. Chicago Title & Tr. Co.*, 266—224.
- Judgment for road taxes should not be against objector personally but against property in respective towns in which taxes are due. *People vs. R. Co.*, 270—516.
- Judgment for railroad company's road and bridge tax should be limited to railroad track in the town. *People vs. Wabash R. Co.*, 271—327.
- A judgment for taxes is defective in form which does not describe the tracts of land ordered to be sold nor refer to the application for judgment and order of sale, delinquent list or other papers in the case for description, and which does not show amount of taxes, interest, penalties and costs for which judgment was entered. *People vs. Smith*, 281—538.
- New trial will not be awarded where judgment is defective in form but the judgment will be reversed and cause remanded with directions to enter a proper judgment. *People vs. Glick*, 282—198.
10. "Whereas, due notice has been given:"
- It is not necessary to use the exact jurisdictional clause provided in the section, but it is only necessary to recite the obtaining of jurisdiction by a notice when jurisdiction is acquired that way. *Gage vs. People*, 213—347.
- Judgment rendered prior to date named in collector's notice is void. *Pickett vs. Hartsock*, 15—279.
11. "For the sum annexed to each:"
- Judgment is not aided by dollar-mark in precept issued thereon. *Lane vs. Bommelmann*, 21—143.
- Judgment must state amount for which it is rendered without reference to other parts of record; an error in precept might be corrected, but not in judgment. *Eppinger vs. Kirby*, 23—521.
- Judgment for taxes is fatally defective, if it does not show amount of tax for which rendered. Use of numerals alone not enough. *Lawrence vs. Fast*, 20—338.
- Use of dollar-mark not enough. *Jackson vs. Cummings*, 15—449.

Judgment for taxes in which only figures are used, without dollar mark or any other means of determining what the figures stand for is a nullity and void. *Wilson vs. Glos*, 266—392.

12. "Or so much of each of them as shall be sufficient:"

This is obsolete in view of Sec. 202 of Revenue Act. *Gage vs. People*, 213—347.

13. Interest, penalties and costs:

Costs should not be decreed against the defendant where plaintiff contesting the tax title does not make a tender of taxes, costs and interest and keep it good. *Gage vs. Goudy*, 141—215 (1892); *Wright vs. Glos*, 264—261.

Judgment against land for taxes, including as costs fees not then due and earned, is a fatal error and no title passes under the tax deed. *Gage vs. Goudy*, 141—215 (1892).

Judgments can cover only costs actually paid; not those in futuro, and costs of 3 cents for selling each lot, making delinquent list on precept, and attending sale and issuing certificate of 15 cents, could not be earned fees at the time of rendition of judgment of tax sale, and are improper items, and will avoid the sale. *Gage vs. Lyons*, 138—590 (1891).

If illegal taxes or improper costs are included in a judgment against land for taxes without appearance by the owner the sale will be void. *Gage vs. Lyons*, 138—590 (1891).

If a judgment against land for taxes and special assessments has included therein costs and fees not then due, but to accrue subsequently to the entry of the judgment, no title will pass by the tax deed made on such judgment. This section is in *pari materia* with Sec. 56 of the Fees and Salaries Act. *Combs vs. Goff*, 127—431.

Specific or general judgment for costs is good. *Jackson vs. Cummings*, 15—449. Recital in deed of judgment, as for an amount, including the costs, is sufficient. *Jackson vs. Cummings*, 15—449.

General judgment for costs is proper under former statute, and construed to mean judgment against lot for costs duly chargeable against, it to be taxed by clerk. *Merritt vs. Thompson*, 13—716.

Property is not liable for costs of proceeding to obtain judgment for a special tax. *People v. Lawson*, 285—382.

14. "Said order shall be signed by the judge":

Signature of county judge is properly affixed on record to a judgment for taxes against lands, after order allowing appeal. *English vs. P.*, 96—566.

15. "Or on account of the property having been charged or listed without name":

Tax list need not give name of property owner. *Ziegler vs. P.*, 164—532.

16. Power to correct informality and power to allow amendments:

Errors or informalities in the proceedings of officers connected with the assessment, levy or collecting of a tax, not affecting the substantial justice of the tax itself, will not vitiate. *P., D. and E. R. Co. vs. P.*, 141—483 (1892).

Where back taxes amounting to \$7.94 were carried forward as amounting to \$7.95, the mistake is cured hereunder. *Hammond vs. Carter*, 155—579 (1895).

Where actually voted at meeting, a failure of school officers to sign certificate of levy of school tax is not fatal, and the defect may be afterwards remedied. *Spring Valley Coal Co. vs. P.*, 157—543 (1895).

Irregularities, informalities, omissions and defective acts of officers in the assessment, levy, etc., of taxes, not affecting the substantial justice of the tax itself, will not vitiate the proceedings, and the court, in its discretion, may correct the proceedings, supply defects therein and make them conform to law, or permit the same to be done in the presence of the court, by the officer through whose neglect or default the same was occasioned. *P. vs. Smith*, 149—549 (1894).

Irregularities in levy of town tax held cured by this section. *St. Louis, etc., R. Co. vs. P.*, 147—9 (1893).

Where the year for which tax is levied is erroneously recited as the subsequent years in appropriation ordinance, it is mere informality. *P. vs. R. Co.*, 189—398.

Failure to furnish to the county clerk a plat properly certified was not fatal, as that was directory only, to aid the clerk to extend the tax, and cured hereby. *Munson vs. Minor*, 22—595.

Omission to tax certain other property will not invalidate taxes levied on other property, and no ground for injunction. *Du Page County vs. Jenks*, 65—275; *Spencer vs. Gardner*, 68—510; *C., B. and Q. R. Co. vs. Siders*, 88—320; *Huck vs. C. and A. R. Co.*, 86—352.

Irregularities in appointment of assessor; appointment of one non-resident of town as assessor; omission of certain property from tax will not invalidate tax. *Du Page County vs. Jenks*, 65—275.

Objection that local taxes were not levied and returned to clerk in time will not avail as to taxes levied since Act of 1873 took effect. *Buck vs. P.*, 78—560; *Chiniquy vs. P.*, 78—570.

Omission of collector and county clerk to compare and correct list, and of collector to file affidavit on first day of term at which application for judgment is made, will not vitiate tax. *Chiniquy vs. P.*, 78—570.

Failure of clerk to extend road tax in separate columns on collector's book does not render tax invalid. *Thatcher vs. People*, 79—597.

Collection of tax on exempt property enjoined. But not of tax on aggregate valuation, because exempted property included, as that mere irregularity. *Huck vs. C. and A. R. Co.*, 86—352.

Errors and informalities in proceedings, not affecting substantial justice, are cured hereby, and do not invalidate levy or assessment. *Edwards vs. P.*, 88—340; *St. Louis, etc., R. Co. vs. Surrell*, 88—535.

Where name was *Jacques Bros. & Co.* and assessed as *C. M. Jacques & Co.*, the mistake will not vitiate tax. *Lyle vs. Jacques*, 101—644.

It is an immaterial informality that the local assessor, assessing railway property which corporation has omitted to list, lists it upon his general assessment roll, instead of upon blanks furnished by county clerk. *Wabash, etc., R. Co. vs. Johnson*, 108—11.

The fact that various taxes against a railroad company were calculated upon the aggregate value of "railroad track" and "rolling stock" is a mere irregularity, not affecting the substantial justice of the taxes or increasing their amount, and does not vitiate the assessment. *Cairo, etc., R. Co. vs. Mathews*, 152—153 (1894).

While an ordinance levying a tax should state in express terms the purposes for which appropriations are made, yet it was sufficient if the tax levy

ordinance referred to the appropriation ordinance for the objects and purposes of the tax. *Spring Valley Coal Co. vs. P.*, 157—343 (1895); *R. R. Co. vs. People*, 218—463.

Objection which does not go to substantial justice of the tax cannot be availed of on application for judgment, as where the town auditors did not certify the claims allowed against the town to the town clerk until after time at which he was required to certify them to the county clerk. *R. Co. vs. P.*, 190—26.

Equity will not restrain collection of tax merely because of assessment of corporate property under slightly erroneous name, as where *A. Booth & Co.*, was the correct name and the book showed *A. Booth Packing Company*, and before the board of review, the owner of name treated the incorrect name as its name. *Booth & Co. vs. Raymond*, 191—355.

Failure to specifically designate the personal property constituting the assessment did not vitiate the assessment. *King vs. P.*, 193—533.

The mere fact that it was not shown that the certificate of levy of the highway commissioners was handed to the supervisor five days before the meeting, does not invalidate the tax; nor does the fact that it was presented to the board by the county clerk instead of the supervisor, so long as the tax was extended by authority of the board. *People vs. R. R. Co.*, 214—190; *People vs. R. Co.*, 256—280.

Stating the name "The Board of West Park Commissioners" instead of "The Board of West Chicago Park Commissioners," is cured hereunder. *Cummings vs. People*, 213—443.

Such judgment cannot be collaterally impeached for mere matters of form. *Chestnut vs. Marsh*, 12—173.

Variance of a quarter of a cent in amount of judgment named in deed from that of record of judgment will not vitiate. *Jackson vs. Cummings*, 15—449.

Ownership is admitted in a proceeding for judgment for delinquent town, road and bridge, and city taxes, where the State and county taxes on the same property had been paid by the same tax-payer. *Ellis vs. People*, 199—548.

A judgment for a delinquent special assessment is not invalidated because of an evident mistake in the published list, where the land owner is not misled, and the warrant was correctly described. *Young vs. P.*, 155—247 (1895).

If paper transmitted by town clerk to county clerk purports to be a copy of original certificate of highway commissioners the county clerk may extend the tax even though copy is irregular or informal. *People vs. Co.*, 248—36; *People vs. Patten*, 287—392.

Failure of proper canvassing board to canvas return of hard roads election is not fatal to tax where there is no question but vote was in favor of tax. *People vs. Green*, 265—39.

Amendments are allowed with greater liberality and may properly be allowed where there has been an attempt to comply with the law and the attempt is ineffective on account of some informality or clerical error, but they cannot be allowed where they add matter which is essential as a basis for the levy of the tax. *People vs. R. Co.*, 260—624.

Where levy for county purposes is invalid because it does not comply with requirements as to stating several purposes for which amount were levied

it is not aided by fact board at regular meeting in June adopted a resolution amending levy by amplifying the insufficient descriptions of such items. *People vs. R. Co.*, 261—70.

The extension of a tax upon a certificate of levy made after first Tuesday in September as required by Roads and Bridges Law of 1913 is invalid and such certificate cannot be considered as an amendment of a previous certificate made in compliance with sections 13 and 14 of Roads and Bridges law as it existed prior to the new law of 1913. *People vs. R. Co.*, 269—513.

Allowance of amendment to objections and leave to file additional objections are within discretion of county, and its action in that regard will not be reviewed unless there is an abuse of discretion. *People vs. Huey*, 277—561.

Report of special assessment collector required to be made before April 1st by sec. 65 of Local Improvement act may be amended on collector's application for judgment, notwithstanding made after April 1. *People vs. Moench Estate*, 277—121.

The right of highway commissioners or county board to amend their records does not depend on section 191. *People vs. R. Co.*, 271—195; *People vs. Ross*, 272—285.

Miscellaneous:

But proceedings prior to judgment not invalidated by failure of judgment to find sums due. *Chickering vs. Faile*, 38—342.

Where tax judgment record book shows that county judge was present, that judicial business was done, adjournment and reassembly of court, and that record of its proceedings was kept, it is enough although formal *praeita* or convening order is absent. *Neff vs. Smyth*, 111—100.

Amendments which may be made:

Certificate of levy is amenable. *Keokuk Bridge Co. vs. P.*, 161—144.

An amendment of the certificate of levy may be made, where the levy was valid for the purpose authorized by law and in substantial compliance with the law, but defective in matters of form. *People vs. R. R. Co.*, 242—515.

The County Court should permit amendment of objections to a tax, where such amendments contained no matter which could have surprised the people. *Ry. Co. vs. People*, 214—471.

This section permits amendments to be made in judicial proceedings for the collection of taxes and under that the record of the highway commissioners might be amended to state the true action taken by the commissioners at the meeting. It was also proper to permit the certificate levying said road tax to be amended to correspond with said record. *Ry. Co. vs. People*, 212—518; *People vs. Illinois Cent. R. Co.*, 271—213, 215.

The court may amend the record on oral testimony of the clerk that he made a mistake in recording the date of the meeting. *Ry. Co. vs. People*, 207—566.

An objection to a tax levy may be amended at the trial, so long as it would work no surprise to the other party. *R. R. Co. vs. People*, 207—312; *People vs. R. Co.*, 281—500.

Where the record of the proceedings of the town meeting set out that taxes were levied for "town purposes," and as a matter of fact the proceedings set out definitely the particular purposes, the record may be amended

upon parol proof, but such proof must be clear. *Ry. Co. vs. People*, 206—565.

It is proper to amend a certificate of tax levy, making it conform to what actually took place at the board meeting. *Ry. Co. vs. People*, 201—351; *People vs. R. Co.*, 271—215.

Return of collector as to delinquent taxes may be amended to show cause of failure to collect personal taxes. *Shelbyville Water Co. vs. P.*, 140—545 (1892).

Minutes of town meeting are amendable. *R. Co. vs. P.*, 174—84.

It is proper to add file-mark of clerk upon published delinquent list, where it is absent, if it appears that book containing the list was delivered to the clerk of the county court within the time required by law. *McChesney vs. P.*, 178—544.

Published certificate to delinquent list is amendable, while application for judgment is still pending. *McChesney vs. P.*, 178—544.

Amendment of its records by a county board nunc pro tunc so as to supply omitted entry of actual levy of road tax, the amendment being before the delivery of the tax books, does not invalidate such tax, the informality being cured by this section. *O. and M. R. Co. vs. P.*, 119—207.

Where the complainant's property was the N. $\frac{1}{2}$ of S. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ and the assessment was of N. $\frac{1}{2}$ of S. $\frac{1}{2}$ of S. W. $\frac{1}{4}$, a certain amount, and also the S. $\frac{1}{2}$ of S. W. $\frac{1}{4}$, the same amount; being an error in the latter description an amendment of description in assessment held proper, under statute. *Walch vs. P.*, 79—521.

Description by which property is assessed is amendable. *Keokuk Bridge Co. vs. P.*, 161—141.

Parol evidence is competent upon application for judgment to aid publisher's certificate. *McChesney vs. P.*, 178—545.

Amendments may be made where mere clerical errors. *Lehmer vs. Miller*, 80—601.

Where agreement between parties was that judgment be entered for two-thirds of amount of taxes for certain years and for some reason it was not so entered, judgment may be amended at subsequent term nunc pro tunc, so as to show what was done. *P. vs. Quick*, 92—580.

Amendment after term must be upon something in the record to amend by. Filling blanks for amounts in record of judgment for taxes not permissible after term. *Frew vs. Danforth*, 126—242.

If bonds of a town have been allowed and a valid levy made to pay the same, but certificate of town clerk erroneously states as its basis action of electors at town meeting instead of certificate of board of auditors, such certificate may be amended to show facts. *People vs. R. Co.*, 248—126, 129.

Error in certificate as to date of meeting of highway commissioners may be cured by amendment. *People vs. Wabash R. Co.*, 265—588.

No amendment can be allowed under section which would amount to levying a tax in the first instance, and in a drainage proceeding the court cannot amend classification roll or make a classification if no classification has been made. *People vs. Chicago & I. Trac. Co.*, 267—510.

Certificate of levy may be amended to show the year from which tax is levied. *People vs. R. Co.*, 273—110.

Leave to amend record to show highway commissioners held a meeting on first Tuesday in September, at which the amount required for road and bridges was determined held proper where testimony shows meeting was held. *People vs. C. & A. R. Co.*, 274—209.

Record of highway commissioners may be amended by oral testimony, upon clear proof of the fact to show that amount of road tax was determined. *People vs. Illinois C. R. Co.*, 271—213.

Copy of special assessment roll attached to collector's warrant cannot be amended to correspond with original roll by supplying words "dollars and cents" at head of columns and inserting dollar sign and decimal point in their proper place. *People vs. Brown*, 261—73.

The delinquent road list not sworn to as required by sec. 110 of Roads and Bridges act cannot be amended on application for judgment. *People vs. Chicago & Ill. Midland R. Co.*, 260—624.

Irregularities which could not be cured:

Amendment cannot be made by virtue of section above where there is nothing upon which to base it. Where the city collector did not have warrants certified by city clerk, there was nothing on which to base amendment, as no warrant. *Craig vs. P.*, 193—202.

Commissioners of highways can only act in the manner and at the time specified by the statute, and their acts performed at any other time are invalid; but if they meet they may lawfully adjourn a meeting held on a proper day. *Ry. Co. vs. People*, 201—351.

Under Sec. 119 of Road and Bridge act, the certificate is not required to state the amount for each purpose. But the town levy must do so, and failure so to do is not cured by amendment as the defect herein is more than formal. *R. R. Co. vs. People*, 213—174.

Application of section above does not render proceeding valid which was void ab initio. Holding a meeting of highway commissioners nearly a month earlier than provided by law (Sec. 13, Chap. 121) is a defect not cured by this section. *R. Co. vs. P.*, 193—598.

Where certain property was used at least in part, for right of way purposes and was returned by owner as "railroad track" and assessed by the State Board of Equalization, and was also assessed for that year by the local assessor, and on the latter taxes application for judgment made by the local assessor, the County Court cannot apportion the taxes of the local assessor's assessment by deducting from the assessment made by him the proportion of the property which it deemed was assessable as "railroad track" as that is the assessor's duty. *Wabash R. R. Co. vs. People*, 196—606.

This section does not dispense with the necessity of the levy of the tax by the municipality authorized by law to levy the same, and it does not authorize, as corrections and amendments, such acts as would vitalize a levy void ab initio. *P. vs. Smith*, 149—549 (1894).

The certificate not filed as required by Sec. 122, *supra*, is not cured hereby. *Gage vs. Nichols*, 135—128 (1890).

If land is misdescribed in delinquent list and notice of application for judgment, court has no jurisdiction to render judgment against land even on personal appearance of owner. *P. vs. Dragstran*, 100—286.

Appearance and defense by land-owner does not make proceeding in personam, and no personal judgment can be rendered though appearance waives defects in notice of application. *P. vs. Dragstran*, 100—286.

A judgment of land for non-payment of taxes, in which only figures are used to designate the amount, and with no dollar mark or other definite means of determining whether the figure stand for dollars, cents or mills, is void. *Potvin vs. Oades*, 45—366.

This does not go to extent of allowing court to levy tax where none was levied by the proper officers. *Holland vs. P.*, 189—351.

Failure of town clerk to transmit to county clerk anything purporting to be a copy of certificate of levy is not a mere irregularity or omission but is fatal. *People vs. R. Co.*, 248—36.

Failure to comply with statutory regulation in levy of a tax is not a mere irregularity but a fatal omission which vitiates the tax. *People vs. McElroy*, 248—574, 577.

In General:

A. How far overvaluation is a defence to judgment:

A voluntary list of property returned by a tax-payer will not be corrected on his application in the absence of fraud, accident or mistake. *Dennison vs. County Commissioners*, 153—516 (1894); *People vs. Illinois C. R. Co.*, 273—220, 260.

Overvaluation of property by assessor where not fraudulent will not be rectified on application for judgment against the property. *Spring Valley Coal Co. vs. P.*, 157—543 (1895).

Mere over-valuation does not, in itself establish fraud in assessment. *Keokuk Bridge Co. vs. P.*, 176—268; *P. vs. Banking Ass'n*, 245—522; *Bank vs. Holmes*, 246—362; *Sanitary Dist. vs. Gifford*, 257—424; *P. vs. Ry Co.*, 286—576.

Value of bridge is not conclusively determined by original cost, or by opinions as to what it would cost to construct it at time of assessment. Assessor need not employ bridge experts for the purpose of ascertaining value of bridge. Information may be sought by assessor from any person or persons before passing judgment upon question of value. Experts need not be employed by assessors to determine value of property subject to assessment. "There is no authority in the County Court upon application of judgment, to either grant relief or refuse judgment unless it was made apparent that there was fraud in the making of the assessment. *Keokuk Bridge Co. vs. P.*, 161—514.

On application for judgment against property for taxes, a court cannot review the question of overvaluation of property, even though there was a mistake, except only, where the officers who made and reviewed the assessments, were actuated by wrongful or malicious motives, so as to result in fraud. *People vs. Bourne*, 242—61; *Sanitary Dist. vs. Gifford*, 257—424, 430; *People vs. R. Co.*, 286—576.

Assessment though unequal as compared with that imposed upon other property owners, is binding in absence of fraud. *Keokuk Bridge Co. vs. P.*, 161—514.

Illegality of tax in entirety, if sustained, will defeat application for judgment. Fraud must be actually proved. *Clement vs. P.*, 177—145.

Variance between delinquent list and advertisement, consisting in the one giving name of owner as "Chesney," and the other giving such name as

"A. B. McChesney," is fatal, if properly availed of, where the collector knows the name of the owner as that would amount to fraud. *McChesney vs. P.*, 178—546.

To avoid tax for overvaluation it must have been fraudulent, and fraud is never presumed. *Spring Valley Coal Co. vs. P.*, 157—543 (1895).

Denial by collector of right to inspect record, does not defeat application for judgment of sale; must show fraudulent overvaluation. *McChesney vs. P.*, 178—548.

A tax-payer is not excused from taxes, because too much was levied and the commissioners already have more than is needed. *Ry. Co. vs. People*, 214—302.

Courts have no power to revise assessment made by assessor, merely because of difference of opinion as to reasonableness of valuation placed upon property. *Keokuk Bridge Co. vs. P.*, 161—140.

The omission to assess others liable to taxation, or to assess portions of their property, or the assessment of the property of others at less than its fair cash value, while it may cause the tax-payers whose property is assessed at its fair cash value to bear an undue portion of the public burden, will not affect the validity of the tax. In absence of fraud, courts are powerless to change valuation. *P. vs. Lots in Ashley*, 122—297; *First Nat'l Bank vs. Holmes*, 246—362, 369.

Courts have no power to revalue property for taxation. *Union Trust Co. vs. Weber*, 96—346; *Spencer vs. P.*, 68—510; *People vs. White & Co.*, 286—259.

Omission to assess others, no ground for denying application, in absence of fraud. *Spencer vs. P.*, 68—510.

B. Fact that all revenue needed had been raised how far a defense:

A tax-payer has no standing to bring mandamus to raise taxes where the effect would be only to place certain municipal departments in receipt of more needed funds, but operates rather to the relator's detriment than otherwise. *People vs. Olson*, 215—620.

While where a tax has been legally assessed but received and used by the wrong parties, the property is excused from further levy, an objecting tax-payer is not relieved because the county has already collected more than it could under the legal rate. *Ry. Co. vs. People*, 212—546.

The mere fact that as much money as could be collected under the legal rate had been raised because numerous tax-payers paid without protest an illegal tax does not excuse another from payment of taxes legally assessed. *Ry. Co. vs. People*, 212—518.

The county clerk may extend the city taxes at a greater rate than is required to produce the exact amount required, so long as he remains within the 2 per cent limit. *R. R. Co. vs. People*, 200—541.

The mere fact report of finance committee of county board shows a balance of more than \$56,000 in county treasury on Sept. 1, does not show that the county board's levy of taxes in the amount of \$51,000 to meet the expenses of county for ensuing year is invalid. *People vs. R. Co.*, 261—33.

C. Misdescription of land as a defense to judgment:

The description of property for purpose of taxation must be sufficiently definite, so as to give the owner information of the claim made against his property, and in case of sale to inform the public what land is offered for sale and to enable the purchaser to obtain a sufficient conveyance. Thus where

a competent surveyor would have no difficulty in locating and identifying the property from it, or it is such as the parties adopted in their conveyance, it is all right. *Koelling vs. People*, 196—353.

Any description by which property can be identified by a competent surveyor with reasonable certainty, either with or without the aid of extrinsic evidence, is sufficient to sustain a tax levy. Where the complaining taxpayer objects to the description, but described the premises the same in his petition to the board, he voluntarily acknowledged the plats according to which such description was made. *Otis vs. People*, 196—542.

In a suit for taxes due on forfeited property—where the delinquent list produced in evidence showed that “95 ft. N. & S. by 150 ft. E. & W., S. E. corner S. $\frac{1}{2}$, Block 8,” was assessed to one Lanning and immediately following was, “Balance of S. $\frac{1}{2}$ Block 8,” assessed to Thos. Ward, this was sufficient description of property for which Ward assessed, when taken in connection with the Lanning assessment. *Greenwood vs. La Salle*, 137—225.

Any description by which the property may be identified by a competent surveyor, with reasonable certainty, either with or without the aid of intrinsic evidence, will be sufficient. *Law vs. People*, 80—268; *Fowler vs. P.*, 93—116; *Vennum vs. P.*, 188—160; *People vs. Brown*, 261—73; *People vs. Wabash R. Co.*, 267—30; *People vs. R. Co.*, 278—25, 29.

Where the description of the delinquent lands was “Part lots 1 and 2 and lot 10, section 16, township 3, south, range 11, west,” this was insufficient, and a judgment rendered against property of that description was void. *P. vs. Rickert*, 159—496.

Description of two tracts of land, one reading “on a part of the S. E. quarter of S. E. quarter of sec. 3, tp. 9 south, range 6 east, 19.05 acres and the other reading, “on a pt. west pt. S. E. N. E. and N. W. N. E. sec. 10 tp. 9 south, range 6 east,” in a certain county is too uncertain to sustain tax levy. *People vs. R. Co.*, 252—395.

Where railroad property is described merely as “Chicago, Burlington & Quincy Railroad Company—Railroad tracks composed of the right of way main track and second main track and turn-out and the stations and improvements of said railway company on such right of way,” court is without jurisdiction to render judgment against railroad property where no amendment of description was made. *People vs. R. Co.*, 256—353.

D. Double assessment as a defense:

Objection to tax upon assessment by local assessor should be sustained when it is shown same property is right of way of railroad company which has paid taxes thereon extended on assessment by State Board of Equalization. *People vs. Wiggins Ferry Co.*, 257—452.

E. Federal control of railroads as a defense:

The fact that railroads are operated and controlled by act of Congress of March 21, 1918, and president's proclamation thereunder is not defense against payment of local taxes on the property. *P. vs. Bridge Co.*, 257—246.

F. Unclassified:

The general Act of 1872 works repeal of all prior conflicting laws, whether general laws or special charters of cities. *Andrews vs. P.*, 75—605.

Where the county board in the name of the people obtains a personal judgment against a tax-payer and sells his real estate under that (Sec. 230), and a private person buys it, on finding that he has thereby acquired no title he cannot by having such set aside be subrogated to the right of the State to proceed in rem. State may proceed in personam and in rem at the same time; but when the taxes are once paid by whatsoever means, the proceeding in rem is not available for the purpose of enforcing the rights of third parties. *P. vs. Winter*, 116—211.

Appeals.] Section 192. Appeals from the judgment of the court may be taken during the same term to the supreme court on the party praying an appeal executing a bond to the People of the State of Illinois, with two or more sureties to be approved by the court, in some reasonable amount to be fixed by the court, conditioned that the appellant will prosecute his said appeal with effect, and will pay the amount of any tax assessment, and cost which may finally be adjudged against the real estate involved in the appeal by any court having jurisdiction of the cause. But no appeal shall be allowed from any judgment for the sale of lands or lots for taxes, nor shall any writ of error to reverse such judgment operate as a supersedeas unless the party praying such appeal or desiring such a writ of error, shall before taking such appeal or suing out such writ of error, deposit with the county collector an amount of money equal to the amount of the judgment and costs. If in case of an appeal, or suing out of a writ of error, the judgment shall be affirmed in whole or in part, the supreme court shall enter judgment for the amount of the taxes with damages, not to exceed ten per cent., and order that the amount deposited with the collector, as aforesaid, or so much thereof as may be necessary, shall be credited upon the judgment so rendered, and execution shall issue for the balance of said judgment, damages and costs. The clerks of the supreme court shall transmit to said county collector, a certified copy of the order of affirmance, and it shall be the duty of the collector, upon receiving the same, to apply so much of the amount deposited with him, as aforesaid, as shall be necessary to satisfy the amount of the judgment of the supreme court, and to account for the same as collected taxes. If the judgment of the county court shall be reversed and the cause remanded for a rehearing, and if upon the rehearing, judgment shall be rendered for the sale of the land or lots for taxes, or any part thereof, and such judgment be not thereon, as herein provided, the clerk of the county court shall certify to the county collector the amount of such judgment, and thereupon it shall be the duty of the county collector to certify to the county clerk the amount deposited with him, as aforesaid, and the county

clerk shall credit the said judgment with the amount of such deposit, or so much thereof as will satisfy the judgment, and the county collector shall be chargeable with, and accountable for, the amount so credited, as collected taxes. Noting herein contained shall be construed as requiring an additional deposit in case of more than one appeal or writ of error being prosecuted in said proceedings. If, upon a final hearing, judgment shall be refused for the sale of lands or lots for the taxes, or any part thereof, the collector shall pay over to the party who shall have made said deposit, or his legally authorized agent or representatives, the amount of the deposit, or so much thereof as shall remain after the satisfaction of the judgment against the premises in respect of which such deposit shall have been made. [As amended by act approved May 25, 1877. In force July 1, 1877. L. 1877, p. 174.]

Under Sec. 192 of Revenue law of 1872 as amended by Act of 1873—Appeals were given to Circuit Court. By Sec. 123 of Act of 1874 entitled "County Courts," "appeals may be taken" to Supreme Court. Held, that appeals could be taken to either courts. *Fowler vs. Pirkins*, 77—271.

The provisions herein which requires a deposit of the amount of judgment and costs as a condition to an appeal or supersedeas does not deprive persons of the constitutional right of writ of error, for while this would be true of writ of error, it was not true of supersedeas. *Bryant vs. People*, 71—32; *Andrews vs. Rumsey*, 75—598.

Amount deposited on appeal should be credited on the judgment, if affirmed, and execution issue for balance. *Chicago, etc., R. So. vs. P.*, 153—409 (1894).

Personal judgment for costs against appellant proper on affirming judgment. Statute does not authorize costs of appeal to be taken out of land. *Durham vs. P.*, 67—414.

On appeal bond to prosecute with effect and pay any judgment for taxes rendered against land, party liable, though remedy against land not exhausted. *Mix vs. P.*, 86—329.

Any number of persons interested may join in bringing writ of error on judgment against land for taxes. *Olcott vs. State*, 10— (5 Gil.), 481.

Party cannot assign error on judgment entered by consent. *P. vs. Owners*, 108—442.

Entry of order defaulting defendant is not final judgment from which appeal lies. *Hess vs. P.*, 84—247.

It will be presumed, on appeal, in the absence of a bill of exceptions, that upon application for judgment for taxes the court below heard evidence to establish the proper publication of the delinquent list, even though the printer's certificate in the record does not conform to the statute. *Bass vs. P.*, 159—208 (1896).

Circuit clerk had authority to issue precept in such case. Further issue of precept by county clerk, in such case, was harmless. *Frew vs. Taylor*, 106—159.

Under this section, the clerk of circuit court in all cases of appeal, if judgment rendered against any particular piece of property, was to make and deliver to the county clerk a record of the lands and lots against which judgment was rendered, substantially as was provided for by Sec. 194. (See Acts under Sec. 194). Record here returned held sufficient. *Frew vs. Taylor*, 106—159.

Under old law appeal bond in appeal from judgment for tax levied by city, and in which city alone is interested, may be made payable to the city. *City of Nashville vs. Weiser*, 54—245.

On appeal by People from an order sustaining objection to item of park tax for focs and salaries, appellee cannot by cross-error, question action of court in sustaining objection to item of tax for interest on bonded debt. *People vs. Vogt*, 262—170.

Review of judgments on application for judgment and order of sale for delinquent special assessment is controlled by this section and may be either by appeal or writ of error. *People vs. Chicago Title & Tr. Co.*, 266-224.

Proceedings in case of appeal.] Section 193. If judgment is rendered by any court, at any time, against any lands or lots, for any tax or special assessment, the county collector shall, after publishing a notice for sale, in compliance with the requirements of section 182 of this chapter, proceed to execute such judgment by the sale of lots and lands against which such judgment has been rendered: Provided, however, that in case of an appeal from any such judgment the collector shall not sell until such appeal is disposed of. [As amended by act approved May 29, 1879. In force July 1, 1879. L. 1879, p. 249.]

After judgment has been affirmed, when collector gives notice of his intended application for judgment and order of sales for other delinquent taxes or assessments, he should state in the notice that lots and lands already ordered to be sold on judgments previously rendered and which have been affirmed on appeal will be exposed for public sale at the same time. *People vs. Chicago Title & Trust Co.*, 270—591.

Appeal taken by People from judgment of County Court suspends all proceedings under the judgment until appeal is disposed of. Tax sale pending appeal is void. *Carne vs. Peacock*, 114—347.

Proviso to section above qualifies that part thereof which precedes it. In case of appeal, should not publish notice provided in Sec. 182 until appeal disposed of. *Boynton vs. P.*, 166—67.

New notice of sale is essential after affirmance of appeal from judgment of sale. *Boynton vs. P.*, 166—67.

Process for sale.] Section 194. On the day advertised for sale, the county clerk, assisted by the collector shall carefully examine said list upon which judgment has been rendered, and see that all payments have been properly noted thereon, and said clerk shall

make a certificate to be entered on said record, following the order of court that such record is correct, and that judgment was rendered upon the property therein mentioned for the taxes, interest and costs due thereon, which certificate shall be attested by the clerk under seal of the court and shall be the process on which all real property or any interest therein shall be sold for taxes, special assessments, interest and costs due thereon and may be substantially in the following form:

I,, clerk of the county court, in and for the county of.....do hereby certify that the foregoing is a true and correct record of the delinquent real estate in said county, against which judgment and order of sale was duly entered in the county court of said county, on the.....day of..... 18...., for the amount of the taxes, special assessments, interest and costs due severally thereon as therein set forth, and that the judgment and order of court in relation thereto fully appears on said record. [As amended by act approved May 29, 1879. In force July 1, 1879. L. 1879, p. 249.]

Under Sec. 194 of Revenue Act the certificate is invalid if made before the day on which property advertised, is to be sold. Should be made on the day advertised for the sale, or void. *Glos vs. Gleason*, 209—517-520; *Glos vs. Dyche*, 214—417; *Glos. vs. Mulcahy*, 210—639-643; *Glos vs. Hanford*, 212—261; *McCraney vs. Glos*. 222—628.

A certificate of tax sale made prior to the sale is insufficient to give deed, and does not invest the holder with ownership. Nor is he stopped after taking this position, to claim benefits under his certificate. *Coombs s. People*, 198—586.

Certificate required by section above, if not made on day property was advertised for sale will not support a tax deed. *Kepley vs. Fouke*, 187—163.

Certificate, required by section above, should be dated as of day of sale. *Kepley vs. Scully*, 185—57.

Presumption is that certificate, required by section above, was made on day of date. *Kepley vs. Scully*, 185—57.

Failure by clerk to make and enter upon record the certificate on which real property should be sold for taxes makes the sale and deed invalid. *Glos vs. Randolph*, 138—268 (1891).

This section is mandatory. Clerk must make and enter upon record the certificate required hereby and in the form provided. Sale and certificates not in conformity hereto are void. *Ames vs. Saukey*, 128—523.

Sec. 194 as in force at this time provided that the record to be made by the county clerk, shall specify among other things, "the total amount of judgment on each tract or lot, and the year or years for which the same is due in the same descriptive order as said property may be set forth in the judgment book." Precept that in body does not show years for which taxes were due, but which does show such years by the plaicita and certificate, conforms to requirement of statute that precept shall specify years. *Neff vs. Smyth*, 111—100.

The statute in force at this time provided that, "The clerk of the county court shall, before the day of sale, make a correct record of the lands and town lots against which judgment is rendered in any suit for taxes due thereon, and which shall set forth the name of the owner, if known, the description of the property, and the amount due in each tract or lot, in the same order as said property may be set forth in the judgment book, and shall attach thereto a correct copy of the order of the court and his certificate of the truth of such record, which record so attested, shall hereafter constitute the process on which all real property shall be sold for taxes, as well as the sales of such property." Under this statute precept if not attested by clerk's certificate is void, and cannot be amended after sale so as to make sale valid. *Eagan vs. Connelly*, 107—458.

Section as originally enacted made attested copy of judgment process for sale. *Bell vs. Johnson*, 111—374.

Under former statute, where judgment contained everything reported by collector which would aid sheriff in executing order of court, failure to furnish sheriff with copy of such report would not vitiate sale. *Manly vs. Gibson*, 14—136.

The old law provided that it "shall be the duty of the clerk, within 5 days after the adjournment of said court, to make out under the seal of said court, a copy of the collector's report, together with the order of the court thereon, which shall hereafter constitute the process on which all lands shall be sold for taxes, and deliver the same to the sheriff of his county." Under this law process for sale which does not recite judgment under which it is issued is void. *Hinman vs. Pope*, 6—(1 Gil.), 131.

Precept under which sheriff sells for taxes is not a process within the meaning of the Constitution and need not run in the name of the people. *Searritt vs. Chapman*, 11—443; *Curry vs. Hinman*, 11—420.

Variance of process from judgment cannot be amended in collateral proceeding on tax title. Where the record of a judgment was for taxes for 99 cents and the precept issued on the judgment recited a judgment against the 8 lots for \$1.25, this was a material variance being a difference of $\frac{1}{4}$ of amount of judgment and so operated to exclude the precept. *Pitkin vs. Yaw*, 13—251.

The want of certificate of a county clerk to the record of a judgment is a fatal defect in the sale of land for taxes. *Ogden vs. Bemis*, 125—105.

New notice of sale is essential after affirmance of appeal from judgment of sale. *Boynton vs. P.*, 166—67.

Repealed.] Section 195. [Repealed by act approved May 29, 1879. In force July 1, 1879. L. 1879, p. 250.]

County clerk to assist in sale.] Section 196. The county clerk, in person or by deputy, shall attend all sales of real estate for taxes, made by the collector, and shall assist at the same.

Entry of sale — Redemption.] Section 197. When any tract or lot shall be sold, it shall be the duty of the clerk to enter on the record aforesaid, the quantity sold and the name of the purchaser, opposite such tract or lot, in the blank columns provided for that

purpose; and when any such property shall be redeemed from sale, the clerk shall enter the name of the person redeeming, the date, the amount of redemption, in the proper column.

Certificates of redemption made by clerk upon deposit of redemption money under this section are competent evidence to prove redemption. *Bush vs. Stanley*, 122—406.

This requires the county clerk to keep a book, in which it is made his duty to make a record of lands sold at a tax sale, etc. Such record is competent and sufficient evidence of facts stated therein. *Gage vs. Parker*, 103—528.

Repealed.] Section 198. [Repealed by act approved May 29, 1879. In force July 1, 1879. L. 1879, p. 250.]

Forfeited tracts noted.] Section 199. All tracts or lots forfeited to the state at such sale, as hereinafter provided, shall be noted on said record.

Sale and redemption record.] Section 200. Said book shall be known and designated as the tax judgment sale, redemption and forfeiture record, and be kept in the office of the county clerk. [As amended by act approved May 29, 1879. In force July 1, 1879. L. 1879, p. 250.]

Manner of conducting sale. Withdrawal of special assessment from collection.] Section 201. The collector, in person or by deputy, shall attend at the courthouse in his county, on the day specified in the notice for the sale of real estate for taxes, and then and there, between the hours of nine o'clock in the forenoon and four o'clock in the afternoon, proceed to offer for sale, separately and in consecutive order, each tract of land or town or city lot in said list on which the taxes, special assessments, interest or costs have not been paid. The sale shall be continued from day to day, until all the tracts or lots in the delinquent list shall be sold or offered for sale: Provided, however, that any city, village or town interested in the collection of any tax or special assessment, may, in default of bidders for same, withdraw from collection any such special assessment levied against any such tract of land or lot by the corporate authorities of such city, village or town, and in case of such withdrawal there shall be no sale of such tract of land or lot on account of the delinquent special assessment thereon. [As amended by act filed June 28, 1917. L. 1917, p. 658.]

Where a special delinquent list is made up, embracing lands upon which judgment has been rendered for special assessments for certain towns, when those towns are reached in the progress of the sale, the act of the collector in selling the list delinquent for special assessments before selling the list for general taxes, was in violation of the statute. *Drake vs. Ogden*, 128—603.

Sales for taxes on a day different from that fixed by law, have been repeatedly held by this court to be void. *Essington vs. Neill*, 21—139.

If sale was made after day fixed by law, it will be presumed that sale was adjourned under statute from day to day until sale. *Messinger vs. Germain*, 6—(1 Gil.), 631.

How sold.] Section 202. The person at such sale offering to pay the amount due on each tract or lot for the least percentage thereon as penalty, shall be the purchaser of such tract or lot: Provided, that no bid shall be accepted for a penalty exceeding six (6) per cent of the amount of such tax or special assessment. [As amended by act approved June 30, 1919. L. 1919, p. 764.]

This section was enacted as Senate Bill 260. House Bill 323 covered the same subject, providing for a penalty not exceeding ten per cent. House Bill No. 323 was approved by the Governor, June 30, 1919 (L. 1919, p. 761) and Senate Bill No. 260 was approved by the Governor on June 28, 1919. The Attorney General in an opinion dated July 26, 1919 held the provisions of Senate Bill No. 260 were in force and effect.

Secs. 202 and 206 do not apply to a sale under a decree foreclosing a tax lien on property which has been forfeited to the State for non-payment of taxes for more than two years. *People vs. Cant*, 260—497.

The amount due includes the fees allowed the county clerk for attending sale and issuing certificate, and for making the delinquent list. *Hammond vs. Carter*, 155—579 (1895).

Purchaser at tax sale of 9 millionth part of lot under old section is entitled, on application to proper officers, to have such fraction listed and assessed separately, in order that he may pay taxes on it. *Roby vs. Chicago*, 48—130.

Forfeited to the state — Certificate — Sale — Notice.] Section 203. Every tract or lot so offered at public sale, and not sold for want of bidders, unless it is released from sale by the withdrawal from collection of a special assessment levied thereon, shall be forfeited to the State of Illinois: Provided, however, that whenever the county judge, county clerk and county treasurer shall certify that the taxes and special assessments not withdrawn from collection on forfeited lands equal or exceed the actual value of such lands, the officer directed by law to expose for sale lands for delinquent taxes shall, on the receipt of such certificate, offer for sale to the highest bidder the tract or lands, in such certificate described, after first giving ten days' notice of the time and place of sale, together with a description of the tract or lands so to be offered. And a certificate of purchase shall be issued to the purchaser at such sale as in other cases in this Act provided; and the county collector shall receive credit in his settlement with the custodian of the several funds, for which such tax was levied for the amount not realized by such sale. And the amount received from any such sale shall be paid by such

collector, pro rata, to the custodian of the several funds entitled thereto. [As amended by act filed June 28, 1917. L. 1917, p. 658.]

The preceding sections do not make any provision for contingency that there be no bidders for any piece of property, this is provided for by Sec. 203. *Zicarelli vs. Stuckart*, 277—26.

Payment of current taxes will not prevent forfeiture for back taxes. *Biggins vs. P.*, 106—270.

Realty is forfeited to State when, at any regular tax sale under Revenue Act, collector shall offer land for sale, and it shall not be sold for want of bidders. *Biggins vs. P.*, 106—270.

Failure of collector to attend.] Section 204. If any collector, by himself or deputy, shall fail to attend any sale of lands or lots advertised according to the provisions of this act, and make sale thereof as required by law, he shall be liable to pay the amount of taxes, special assessments and costs due upon the lands or lots so advertised. Said collector may afterwards advertise and sell such delinquent property to reimburse himself for the amount advanced by him; but at no such sale shall there be any property forfeited to the state.

Failure of county clerk to attend.] Section 205. If any county clerk shall fail to attend any tax sale of real estate, either in person or by deputy, or to make and keep the record, as required by this act, he shall forfeit and pay the sum of \$500, and shall be liable to indictment for such failure, and upon conviction shall be removed from office. Said sum shall be sued for in an action of debt, in the name of the People of the State of Illinois, and when recovered shall be paid into the county treasury.

Payment by purchaser.] Section 206. The person purchasing any tract or lot, or any part thereof, shall forthwith pay to the collector the amount charged on such tract or lot, and on failure so to do, the said tract or lot shall be again offered for sale in the same manner as if no such sale had been made; and in no case shall the sale be closed until payment is made, or the tract or lot again offered for sale.

Section does not apply to a sale under a decree foreclosing a tax lien on property which has been forfeited to the State for non-payment of taxes for more than two years. *People vs. Cant*, 260—497.

Section is applicable to proceedings under Local Improvement Act. *Barber A. P. Co. vs. Chicago*, 139 A. 121, 132.

Certificate of purchase — Assignable — Exception.] Section 207. The county clerk shall make out and deliver to the purchaser of any lands or lots sold as aforesaid a certificate of purchase, to be countersigned by the collector, describing the lands or lots sold as the same

was described in the delinquent list, date of such sale, the amount of taxes, special assessments, interest and cost for which the same was sold, and that payment has been made therefor. If any person shall become the purchaser of more than one tract or lot, he may have the whole or one or more of them included in one certificate. Such certificate of purchase shall be assignable by endorsement and an assignment thereof, shall vest in the assignee or his legal representatives, all the right and title of the original purchaser: Provided, That said clerk shall include in such certificate of purchase not to exceed one lot, block, tract or piece of land as listed, assessed and sold in one description, except in cases where such lot, block, tract or piece of land is owned by one party or person. [As amended by act approved May 13, 1903. In force July 1, 1903. L. 1903, p. 298.]

Sale is an abandonment of all back taxes not included therein. After tax sale for taxes due and unpaid, the State cannot defeat the title of the purchaser by a resale of the same land for taxes which were due and might have been included in it. *Law vs. P.*, 116—244.

Tax deed held void, if based upon purchase by collector. Under former law which provided that "no collector shall be either directly or indirectly concerned in the purchase of any tract of land or town lot sold for taxes under penalty of \$100.00." *Ely vs. Brown*, 183—598.

Form of certificate applicable to special assessments. *Barber A. P. Co. vs. Chicago*, 139 A. 121, 132.

Index to tax sale books.] Section 208. The county clerk is hereby authorized to make an index to tax sale records in a book, when furnished by the county — which index shall be kept in the county clerk's office as a public record, open to the inspection of all persons during office hours.

Certified copy of sale lists to be sent to auditor—In twenty days after sale.] Section 209. The county clerk shall, within twenty days after any sale for taxes, make out and transmit to the auditor a transcript of sales for taxes, which shall be written on foolscap paper, made up and stitched in book form, suitable for binding. The clerk shall certify to the correctness of said transcript, under the seal of his office. Said list shall not include any tract or lots forfeited to the state at such sale. The county clerk, for failure to make out, furnish or forward said list, as herein required, shall forfeit and pay into the state treasury the sum of \$500, to be recovered in an action of debt, in the name of the People of the State of Illinois, in any court in this state having competent jurisdiction.

Redemption — Time of redemption — Amount.] Section 210. Real property sold under the provisions of this Act may be redeemed at any time before the expiration of two years from date of sale,

by payment in legal money of the United States to the county clerk of the proper county, the amount for which the same was sold, together with the amount of the penalty bid at such sale, if redeemed at any time before the expiration of six months from the day of sale; if between six and twelve months, the amount for which the same was sold together with twice the amount of the penalty bid; if between twelve and eighteen months, the amount for which the same was sold together with three times the amount of the penalty bid; if between eighteen months and two years, the amount for which the same was sold together with four times the amount of the penalty bid at said sale. The person redeeming shall also pay the amount of all taxes and special assessments accruing after such sale with seven (7) per cent penalty thereon in all cases where the purchaser at the tax sale or his assignee shall pay such subsequent tax or special assessments more than six months after such tax sale; and it is hereby made the duty of the county clerk to include the amount of the subsequent taxes or special assessments paid by the purchaser or holder of the tax certificate in his certificate of redemption: Provided, however, that the county clerk shall not be required to include any subsequent taxes or special assessments in his certificate of redemption, nor shall the payment thereof be a charge upon the land sold for taxes, unless the purchaser, assignee, or holder of the tax certificate of sale shall have filed with the county clerk, before redemption, an official, original or duplicate tax collector's receipt for the payment of such subsequent taxes or special assessments, and it shall be the duty of the tax collector to furnish such duplicate receipts. If the real property of any minor heir, idiot or insane person shall be sold for non-payment of taxes or special assessments, the same may be redeemed at any time after sale and before the expiration of one year after such disability be removed, upon the terms specified in this section, and upon the payment of ten (10) per cent per annum, the amount due including penalties from and after the expiration of two years from the date of sale, which redemption may be made by themselves, or by any person in their behalf. Tenants in common or joint tenants shall be allowed to redeem their individual interests in real property sold under the provisions of this Act, in the same manner and under the terms specified in this section for the redemption of other real property; any redemption made shall inure to the benefit of the person having the legal or equitable title to the property redeemed, subject to the

right of the person making the same to be reimbursed by the person benefited. [As amended by act approved June 28, 1919. L. 1919, p. 764.]

Redemption referred to in Sec. 253 means the redemption contemplated by Sec. 210. *Clark vs. Zaleski*, 253—63.

Where no redemption is made, Sees. 216, 217 and 219 provide for proceeedure to be followed by purchaser of real estate at tax in order to secure a tax title to the property. *Ziecarelli vs. Stuekart*, 277—30.

Where last day of the two years falls on Sunday it should be excluded, and parties entitled to redemption may redeem on following day. Notice stating that time for redemption expires on a given day, which falls on Sunday, is invalid, and sale thereon is voidable. *Gage vs. Davis*, 129—236.

Redeeming person must pay taxes accruing after the sale as well as amount of sale, interest and penalty. Plea of redemption should allege payment thereof. *P. vs. Ryan*, 116—73.

County clerk may require party seeking to redeem to produce receipt or certificate from collector showing payment of subsequent taxes. *Gage vs. Seales*, 100—218.

If party seeking to redeem fails by paying too little, through mistake of clerk, chancery will relieve him. *Gage vs. Seales*, 100—218.

Certificate of redemption is only evidence of deposit of redemption money with clerk; not of right to redeem, nor of age of depositor. *Henrichsen vs. Hodgen*, 67—179.

Terms of redemption between owner and purchaser are fixed by law in force at date of sale, and Legislature is powerless to change them. The old Act provided that the tender be in specie; an Act changing it to legal tender notes is invalid. *P. vs. Riggs*, 56—483.

Sec. 210 provides that any redemption shall inure to the benefit of the owner, and that a receipt of redemption money, or a return of the certificate for cancellation, will constitute a redemption. Redemption by a stranger, with color of authority, will inure to benefit of owner. *Houston vs. Buer*, 117—324.

Where redemption is by one as agent without authority, ratification is presumed. Reassignment to tax purchaser by such agent will not defeat redemption. *Houston vs. Buer*, 117—324.

Redemption from tax sale by one co-tenant inures for benefit of all. Redemption of whole, and acquisition of legal title, subjected to trust for co-tenants. *Lomax vs. Gindele*, 117—527.

Under former statutes:

The reason and spirit of the statute was to give the purchaser not only double the amount he paid at the sale for taxes, but ten per cent, on all moneys he may have subsequently disbursed for annual taxes, since that day, computing the same from the day when the sale might have been made, in case the taxes were not paid. If he pays no taxes he can claim no interest. *Comstock vs. Cover*, 35—470.

Act of 1839 (February 26) required parties seeking to redeem from sale during their minority to satisfy clerk by affidavit of their right. Failure of clerk to file affidavit establishing right to redeem did not prejudice their rights. *Chapin vs. Curtenius*, 15—427.

Sec. 39 of Revenue Act of 1839 applied only to females covert owning land in their own right. *Finch vs. Brown*, 8—(3 Gil.), 488.

Receipt for redemption money, given by State Treasurer and countersigned by Auditor, is evidence of redemption. *McConnell vs. Greene*, 8—(3 Gil.), 590.

When purchaser suffers land to be sold again.] Section 211. If any purchaser of real estate sold for taxes or special assessments shall suffer the same to be forfeited to the State, or again sold for taxes or special assessment, before the expiration of the last day of the second annual sale thereafter, such purchaser shall not be entitled to a deed for such real property until the expiration of a like term from the date of the second sale or forfeiture, during which time the land shall be subject to redemption upon the terms and conditions prescribed in this act; but the person redeeming shall only be required to pay for the use of such first purchaser, the amount paid by him. The second purchaser, if any, shall be entitled to the redemption money, as provided for in the preceding section: Provided, however, it shall not be necessary for any municipal corporation which shall bid in its own delinquent special assessments, at any sale, in default of other bidders, to protect the property from subsequent forfeitures or sales, as above required in this section. [As amended by Act approved May 29, 1879. In force July 1, 1879. L. 1879, p. 250.]

This operates to extend life of certificate for added period holder has to wait if property again sold for taxes. *Netterstrom vs. Kemeys*, 187—617.

Application of this section. *Ely vs. Brown*, 183—600.

Where the property was sold in July, August and September of the year 1877, it was not sufficient to pay the penalty on the last sale, as sales in different months for taxes and special assessments on judgments rendered at same term of court, the sale being continued from time to time through such months, treated as one sale. *Gage vs. Parker*, 103—528.

Books, etc., evidence.] Section 212. The books and records belonging to the office of county clerk, or copies thereof, certified by said clerk, shall be deemed prima facie evidence to prove the sale of any land or lot for taxes or special assessments, the redemption of the same, or payment of taxes or special assessments thereon.

Clerk to pay over money to successor.] The county clerk, shall, at the expiration of his term of office, pay over to his successor in office all moneys in his hands received for redemption from sale for taxes on real estate. [As amended by Act approved May 3, 1873.]

“Sale and redemption” book affords only evidence of manner of sale. *Gage vs. Bailey*, 102—11.

Sales in error — Entry.] Section 213. Whenever it shall be made to appear to the satisfaction of the county clerk that any tract or lot was sold, and that such tract or lot was not subject to taxation, or upon which the taxes or special assessments had been paid previous to the sale of said tract or lot, or arises from a double assessment, or that the description is void for uncertainty, he shall make an entry opposite to such tracts or lots in the sale and redemption record that the same was erroneously sold, and such entry shall be prima facie evidence of the fact therein stated; and unless such error is disproved the county collector shall, on demand of the owner of the certificate of such sale, refund the amount paid and cancel such certificate so far as it relates to such tract or lots. The collector shall take credit in settlement of his accounts thereafter with such officers as he may be liable to for their pro rata amounts respectively paid aforesaid. [As amended by Act which became a law and in force June 26, 1895. L. 1895, p. 299.]

The amendment of 1895 repeals by implication provision of Sec. 268 providing for refund of an additional one hundred percent. *Heydecker vs. Price*, 136 A. 512, 514.

— Purchaser at erroneous sale paid back.] Section 214. When the purchaser at such erroneous sale, or any one holding under him, shall have paid any tax or special assessment upon the property so sold, which has not been paid by the owner of the property, he shall have the right to recover from such owner the amount he has so paid, with ten per cent. interest, as money paid for the owner's use.

A purchaser at a tax sale on property of a description which does not exist may recover, from the owner of the property intended to be conveyed, the amount he paid, with 10 per cent. interest. *Joliet Stove Works vs. Kiep*, 230—550 affirming 132A. 457.

The section does not permit purchaser at tax sale to recover from owner of untaxable property taxes which he paid thereon. *Tift vs. Chicago College of Medicine*, 212 A. 286.

Effect of receipt of redemption money.] Section 215. The receipt of the redemption money of any tract of land or lot, by any purchaser, or the return of the certificate of purchase for cancellation, shall operate as a release of all the claim to such tract or lot under, or by virtue of the purchase.

Tax deeds — Notice.] Section 216^a. Hereafter no purchaser or assignee of such purchaser of any land, town or city lots at any sale of land, or lots, for taxes or special assessments, due either to the State or county, or incorporated town or city within

the same, or at any sale for taxes or levees otherwise, by the laws of this State, shall be entitled to a deed for lands or lots so purchased, until the following conditions have been complied with, to wit: Such purchaser,^b or assignee shall serve or cause to be served¹ a written or printed, or partly written or partly printed notice^{1a} of such purchase on every person in actual possession or occupancy² of such land or lot; also upon the person in whose name the same was taxed or especially assessed,³ if upon diligent inquiry, he or she can be found in the county, also, the owners of or parties interested⁴ in said land or lot, including trustees or mortgages of record, if they can upon diligent inquiry be found in the county, at least three months⁵ before the expiration of the time of the redemption on such sale, in which notice he shall state when he purchased the land or lot, in whose name taxed, the description⁶ of the land or lot he has purchased; for what year⁷ taxed or especially assessed,⁸ and when the time of redemption will expire.⁹ If no person is in possession or occupancy of such land or lot, and the person, in whose name the same was taxed or especially assessed, upon diligent inquiry cannot be found in the county, or said owners of, or parties interested in said land or lot upon diligent inquiry cannot be found in the county,¹⁰ then such person, or his assignee shall publish such notice in some newspaper printed and published in such county, and if no newspaper is printed in said county, then in the newspaper that is published in this State nearest to the county seat of the county¹¹ in which such land or lot is situated, which notice shall be inserted three times, the first time not more than five months,¹² and the last time not less than three months, before the time of redemption shall expire; Provided, however, that if the owners of said land or lot, or said parties interested therein, cannot be found in the county and the person in actual occupancy is tenant to, or is in possession under said owner or said party interested therein, then service of such notice upon said tenant or occupant shall be deemed service upon said owner or party interested: Provided, however, that if the said owners or parties interested are unknown to such purchaser or his assignee, then the said publication, as to them, may be to the unknown owner or parties interested as aforesaid: And, provided, further, that said notice of publication shall include not to exceed one lot, block, tract or piece of land as listed, assessed and sold in one description, except in cases where more than one lot, block, tract or piece of land is owned by one party or per-

son, in which case all the lots, blocks, or traets owned by such person may be included in one notice. When any person who, by the terms of this section is entitled to be served with notice cannot, upon diligent inquiry be found, the affidavit in the preceding section provided for shall set forth particularly the inquiries made, of whom made, and when and where made. [As amended by act approved June 26, 1913. L. 1913, p. 519.]

A. In General:

To carry out the provisions of Secs. 4 and 5 of Article 9 of the Constitution the Legislature has imposed condition, by Sec. 216 with which the purchaser of real estate for delinquent taxes must comply before he will be entitled to a deed. *Clark vs. Zaleski*, 253—74.

B. The notice need not describe who was purchaser:

Taylor vs. Wright, 121—455.

1. Such purchaser or assignee shall serve or cause to be served:

Service must be by or for purchaser or assignee at time of service. Service of notice by a person who afterwards became assignee is not sufficient. *Chappell vs. Spire*, 106—472.

Service of notice may be made elsewhere than on premises. *Gage vs. Bailey*, 102—11.

Affidavit of notice of tax which states service of such notice on A by handing the same to B, "the legal agent for said A," is insufficient to show service on A, as must appear that agent for that particular purpose. *Gage vs. Waterman*, 121—115.

1a. Notice:

Notice required by section above is essential to validity of deed. *Palmer vs. Riddle*, 180—462; *People vs. Banks*, 272—502.

In order to pass title, notice of sale must be served on person in whose name the land was taxed, if a resident of the county, though color of title may be given without notice of sale and date of expiration of time of redemption. *Miller vs. Pence*, 132—149.

The purchaser must, in order to entitle him to a deed and to invest the county clerk with authority to execute the same, show a strict compliance with the conditions set forth in this section. *Combs vs. Goff*, 127—431.

Notice for redemption should state the particular facts relied on as showing a compliance with Pars, 218, 219. *Wallahan vs. Ingersoll*, 117—123.

Notice for redemption indispensable prerequisite of deed. Redemption after time allowed on equitable terms in absence of notice. *Gage vs. Bailey*, 115—646.

Constitution (Sec. 5, Art. 9) guaranties that occupants shall in all cases be served with notice before period for redemption expires, and compliance with this requirement is indispensable condition precedent to right to make deed. *Gage vs. Bailey*, 100—530.

The requirements of this section as amended, though not in force at the time of the tax roll, took effect in praesenti, and must be complied with as a prerequisite to the making of the deed. It is not void as impairing the obligation of the contract. *Gage vs. Stewart*, 127—207.

Amendatory Act of May 27, 1879, controls sales of land for taxes made in June of that year, as respects the notice to be given to the owner or party interested. *Smith vs. Prall*, 133—308.

Tax deed given in 1864, without notice to redeem to party to whom lands were assessed, served according to statute, is void. Under the old law the theory was that a deed obtained without notice of redemption having been given, as the statute provides, was obtained by fraud or bad faith, and therefore would not furnish color of title on which to base seven years' possession, in favor of purchaser at tax sale, though will in favor of his bona fide purchaser for value. *Barnard vs. Hoyt*, 63—341; *Dalton vs. Douglas*, 63—337.

Proof of such notice necessary to admissibility of deed in evidence. *Holbrook vs. Fellows*, 38—440.

Issuance of deed without notice to person against whom tax was assessed, of expiration of time for redemption, is unconstitutional and deed is void. *Holbrook vs. Fellows*, 38—440.

Notice must contain every essential statutory element, if it omits one of the essential statutory requirements the deed issued pursuant thereto will be absolutely void. *People vs. Banks*, 272—502; *Wright vs. Glos*, 264—261.

Sec. 216 must be strictly complied with in case of an ordinary sale of real estate for delinquent taxes, or the tax deed will be void. *Clark vs. Zaleski*, 253—63.

2. On every person in actual possession or occupancy:

The cutting of a few cords of wood and piling it upon land occupied by other persons, and subsequently moving it off and selling it, does not constitute such an occupation of premises by a person as to entitle him to receive notice. *Hammond vs. Carter*, 155—579 (1895).

Where a strip of the land embraced in a tax sale is fenced in with land belonging to an adjoining owner, there being no use made of nor rent paid for such strip, such land-owner is not in possession of such strip within the meaning of this section requiring notice. *Hammond vs. Carter*, 155—579 (1895).

Notice to "Beard" is not invalidated by showing that "Baird" was in possession, where it appears the identical person was personally served with notice. *Hammond vs. Carter*, 155—579 (1895).

The possession or occupancy specified in the statute is one which is held adversely to the holder of the tax certificate. The statute never contemplated that the tax-sale purchaser should himself create an occupancy and then serve a notice upon the occupant of his own creation. *Burton vs. Perry*, 146—71 (1893).

Statute in this section makes no distinction between actual possession and actual occupancy, and does not require service of notice upon person in constructive possession or in constructive occupancy. Such a person may be beyond the limits of the State. *Taylor vs. Wright*, 124—455.

Failure to serve notice on party occupying land under verbal lease and in possession will avoid the tax deed, although notice was served on his wife. *Gage vs. Lyons*, 138—590 (1891).

This section refers to occupants at time of service of the notice. *Gonzalia vs. Bartelman*, 143—634 (1892).

Affidavit of service on persons "occupying the said lands when the same were sold," is insufficient, as it should be to such as are owners at time notice is served. *Gonzalia vs. Bartelman*, 143—634 (1892).

3. The person in whose name the same was taxed, etc.:

Stating that the land was assessed to A is equivalent to saying that it was taxed to A. *Taylor vs. Wright*, 121—455.

To entitle purchaser at tax sale, on his assignee, to deed where property has not been assessed in name of any person, it is sufficient to serve notice of sale on only party in possession, more than three months before expiration of time for redemption. *Gage vs. Bailey*, 102—11.

Taxing a lot in the name of "J. W.," a former owner, does not tend to prove that it was specially assessed in that name. *Gage vs. Webb*, 141—533 (1892).

4. Or parties interested:

Notice must be given to "owners or parties interested" in land when the notice is served. *Gonzalia vs. Bartelman*, 143—634 (1892).

As the statute now is, the purchaser cannot know, from any direction given, to whom he is expected to give the notice which the statute requires, other than to the owner. In that respect the statute must be regarded as meaning precisely the same as it would mean if the words, "or parties interested," had been omitted, and having given notice to the owner, it is sufficient. *Smyth vs. Neff*, 123—310.

Notice to each of the commissioners of a drainage district is sufficient service upon such district. *Hammond vs. Carter*, 155—579 (1895).

Notice is not required to be given to persons acquiring rights in the property during the three months preceding the expiration of the time of redemption. *Hammond vs. Carter*, 155—579 (1895).

Notice was not required to be served upon the "owner or parties interested" by that designation prior to the amendment of 1879. *Gage vs. Webb*, 141—533 (1892).

Notice served upon the husband of the owner is invalid. *Cotes vs. Rohrbeck*, 139—532 (1891).

Affidavit that notice served on "Reid & Sherwin" by handing to "Joseph Sherwin, one of the firm," is insufficient, as it was not good service as to Reid. *Gage vs. Reid*, 118—35.

It is not necessary to serve notice upon a mere laboring man in the employ of the owner or tenant, not the business agent of the latter, nor in any way authorized to receive such notice. The notice may include two or more tracts of land. *Hammond vs. Carter*, 155—579 (1895).

Notice served on laboring man employed by property owner is not sufficient. *Gage vs. Schmidt*, 104—106.

Under statute, notice of tax sale need not be given mortgagee of owner. *Smyth vs. Neff*, 123—310.

Mortgagee is not entitled to notice under this section. *Glos vs. Evanston B. & L. Ass'n*, 186—590.

5. Three months before the expiration of the time of redemption:

Provision in this section that notice of tax sale shall be given three months before expiration of constitutional period for redemption is not unconstitutional in that it deprives persons in possession up to the time of the termination of the period of redemption, of notice, as the Constitution con-

templates service of notice before the expiration of the period. *Taylor vs. Wright*, 121—455.

6. Description of land:

Misdescription of land in published notice invalidates deed. *Esker vs. Hefferman*, 159—38 (1895).

Statute does not forbid purchaser from inserting two or more tracts in one notice, and, statute being silent, purchaser may exercise his own judgment thereon. Notice including two or more tracts in one notice, not invalid. Sec. 218, *infra*, contemplates more than one tract in notice. It provides that "The fee for such publication shall not exceed \$1 for each tract or lot contained in such notice." *Drake vs. Ogden*, 128—603; *Hammond vs. Carter*, 155—579.

7. For what year taxed or specially assessed:

The notice is not rendered invalid by the fact that, in stating the year for which the assessment was made, the figures "889" were used instead of "1889," where other portions of such notice show fully and in detail what year the taxes were assessed for. *Hammond vs. Carter*, 155—579 (1895).

Notice of tax sale hereunder which does not contain statement of the year for which the land sold was taxed is insufficient. *Taylor vs. Wright*, 121—455.

Notice of expiration of redemption must state for what year real estate sold was taxed or specially assessed. *Harrell vs. Bank*, 183—547.

Notice must state for what year taxed, and if for special assessment, for what year specially taxed. *Gage vs. Webb*, 141—533 (1892).

8. Taxed or specially assessed:

Notice required by section above should specify whether lands were sold for general tax or special assessment. *Bailey vs. Smith*, 178—74.

Notice of tax sale, failing to state that the sale was for a tax sale or special assessment, is void. *Gage vs. Dupuy*, 137—652 (1890).

Notice must specify whether lots were sold for taxes or for special assessments. General phrase including both, insufficient. *Gage vs. Davis*, 129—236.

A notice of a tax sale which states the sale of the land for "delinquent taxes and special assessments" levied for a certain year, but fails to specify whether for taxes or special assessments, is defective, and will not authorize a deed. *Stillwell vs. Brammell*, 124—338.

Notice of tax sale which states that sale was for a tax or a special assessment is insufficient; notice should state which of the two it was sold for. *Gage vs. Waterman*, 121—115.

Notice must show whether for taxes or special assessments. *Harrell vs. Bank*, 183-547.

The notice must state whether the property was taxed or specially assessed. Thus a notice as follows: "This is to notify you, that, on the 13th day of September, 1873, Henry H. Gage purchased, and afterwards assigned the certificate of purchase to the undersigned, at a sale of lots and lands for taxes and special assessments, authorized by the laws of the State of Illinois, the following described real estate, taxed in the name of Wm. Betts, to wit: (except street) subplot 4, all of sublots 5 and 6 of Lots 13, 15, 16 and 17 in Block 2 west part of Samuel Ellis' Addition to Chicago; said taxes and assessments were levied for the year 1872; and that the time

of redemption thereof from said sale will expire on the 13th day of September, 1875. *ASAHEL GAGE*;" is defective. *Gage vs. Davis*, 129—236.

9. When the time of redemption will expire:

Notice failing to state correctly the time when redemption will expire is invalid. *Brophy vs. Harding*, 137—621 (1891).

Inaccuracy in notice for redemption as to time when period will expire is fatal, though it extended time beyond the statutory period. *Wisner vs. Chamberlin*, 117—568.

Notice which states that time of redemption will expire October 26, 1876, when it does not expire until November 6, 1876, is fatally defective. *Gage vs. Bailey*, 100—530.

Misstatement in notice of expiration of time of redemption will render tax deed invalid, even though such mistake enlarged, by misstatement, the time for redemption, and no effort to redeem was made by party notified. *Benefield vs. Albert*, 132—665.

A notice which states the time of expiration of the period of redemption on a Sunday, is defective, and a deed predicated thereon is invalid, notwithstanding the two years expires on a Sunday, for Sunday is to be excluded by Sec. 1, Clause 11, of Chap. 131 of statute. *Gage vs. Davis*, 129—236.

10. If upon diligent inquiry he or she cannot be found in the county:

Affidavit is insufficient which sets up diligent search simply in one particular county. *Glos vs. Boettcher*, 193—536.

The affidavit need not specify the particular persons of whom diligent inquiry was made. *Hammond vs. Carter*, 155—579 (1895).

Affidavit that affiant has made diligent inquiry for owner within the county is bad. He is bound to make diligent inquiry without reference to county lines. *Van Matre vs. Sankey*, 148—536 (1893).

The statute does not permit the holder of the tax certificate to postpone his diligent inquiry until after he had published his notice. *Burton vs. Perry*, 146—71 (1893).

The affidavit is fatally defective if it fails to show that the maker was not able on diligent inquiry to find in the county the owners of the property. It is not sufficient to state that he was unable to find the names of such owners. *Harding vs. Brophy*, 133—39.

An affidavit for a tax deed wherein holder of certificate positively states premises were not taxed or assessed in the name of any person, whereas collector's warrant shows the owner's name is insufficient to show diligent inquiry. *Keeney vs. Glos*, 258—555.

Diligent inquiry mean what an ordinary business man or other person would understand them to mean if he sent an employe to a certain house to find the occupant, and it cannot be said an employee would discharge his duty in that regard if he went to the house on Saturday and Sundays only. *Wright vs. Glos*, 264—261.

An affidavit that owner of premises could not be found upon diligent inquiry is overcome by testimony of the owner of legal title that he resided on the premises in question for four years, which covered entire period of redemption, during which time his name was in the city directory, showing that he resided on the premises and that during spring and summer of each year he was in city all the time except Saturdays and Sunday. *Wright vs. Glos*, 264—261.

11. Nearest the county seat of the county:

Notice of sale for taxes and expiration of redemption period must have been published in "nearest newspaper to the county, published in State." To determine that, must measure from county line. *Weer vs. Hahn*, 15—298.

12. "The first time not more than five months":

To make notice by publication sufficient to authorize issue of tax deed, it must be shown that no one is in actual possession of premises within five months of expiration of time for redemption. *Gage vs. Bailey*, 100—530.

Miscellaneous:

Person in whose name land is taxed must be personally served with notice, it can be found in county. *Burton vs. Perry*, 146—71 (1893).

Affidavit — Evidence — Perjury.] Section 217. Every such purchaser or assignee, by himself or agent,¹ shall, before he shall be entitled to a deed, make an affidavit^{1a} of his having complied with the conditions of the foregoing section, stating particularly the facts relied on as such compliance²—which affidavit shall be delivered to the person authorized by law to execute such tax deed, and which shall by him be filed with the officer having custody of the record of the lands³ and lots sold for taxes and entries of redemption in the county where such lands or lots shall lie, to be by such officer entered on the records of his office, and carefully preserved among the files of his office, and which record or affidavit shall be prima facie evidence that such notice has been given. Any person swearing falsely in such affidavit shall be deemed guilty of perjury, and punished accordingly.

1. Affidavit—By whom made:

Affidavit is defective which does not show on its face that it was made by purchaser or his assignee personally or by an agent. *Perry vs. Bowman*, 151—25 (1894).

Parol evidence cannot be introduced to show that the person making the affidavit was in fact the agent of the purchaser. *Perry vs. Bowman*, 151—25 (1894).

Affidavit required by section above, is essential to validity of deed. *Palmer vs. Riddle*, 180—463; *Palmer vs. Frank*, 169—92.

1a. Necessity of affidavit:

Purchaser's failure to show making of such affidavit will not prevent deed from furnishing color of title under statute of limitations. *Whitney vs. Stevens*, 89—53.

Purpose of 217 requiring purchaser to file affidavit showing compliance with Sec. 216 is to furnish record evidence of certain facts and to furnish officer who is required to issue deed with a basis for his action. *Clark vs. Zaleski*, 253—63.

Affidavit is jurisdictional, and if no proper affidavit is filed the tax deed issued thereon is null and void. *Wilson vs. Glos*, 266—392.

The affidavit herein required does not apply to proceedings under Sec. 253. *People vs. Banks*, 272—506.

2. What affidavit must show:

- Affidavit upon which tax deed is based, must show that notice of expiration of redemption period was served upon person in whose name lots were specially assessed. *Harrell vs. Bank*, 183—548.
- Affidavit upon which tax deed is based, must show in whose name the lots were specially assessed. *Harrell vs. Bank*, 183—548.
- Affidavit should positively state that person upon whom notice is served, is owner. *Glos vs. Gould*, 182—514.
- Affidavit of purchaser is insufficient which states that he "caused to be served a notice on A, as owner." *Glos vs. Gould*, 182—514.
- Affidavit falsely stating that premises are vacant, voids deed. *Langlois vs. McCullom*, 181—198.
- Additional affidavit cannot be filed after issuance of tax deed to cure defects in original one and support new deed. *Lauer vs. Weber*, 177—120.
- Affidavit required by section above, should state that person upon whom notice is served, was owner at time of service. *Lauer vs. Weber*, 177—119.
- Where owner is non-resident, failure of affidavit for deed to state that occupant's possession is under non-resident owner is fatal. *Esker vs. Hefferman*, 159—38 (1895).
- Deed is a nullity when the affidavit does not conform to Sec. 217. *Perry vs. Bowman*, 151—25 (1894).
- Parol evidence cannot supply defects or omissions in the affidavit. *Hughes vs. Carne*, 135—519 (1891).
- Affidavit for deed showing S. A. B—— to be owner estops the affiant from denying that B. was owner. *Hughes vs. Carne*, 135—519 (1891).
- Affidavit for deed must show all that is necessary to entitle applicant to have the deed executed. *Hughes vs. Carne*, 135—519 (1891).
- Affidavit of service of notice on "Reese Pierce & Co." by service on "L. H. Pierce" is insufficient, even if proved that was member of firm. *Hughes vs. Carne*, 135—519 (1891).
- Affidavit must show service of notice on "owners or parties interested at the time of publication." *Gonzalia vs. Bartelman*, 143—634 (1892).
- It is imperative that the affidavit show service of notice on the owner or the party interested. *Smith vs. Prall*, 133—308.
- Affidavit ought to show who served the notice, in what manner it was served, whether it was written or printed or partly written and partly printed, and when it was served. *Brickey vs. English*, 129—646.
- An affidavit of the service of notice, to entitle the purchaser to a deed on a tax sale, must show the names of all persons in the actual possession of the land, also the person in whose name it was taxed, and also the names of the owners or parties interested in the premises, and the service of the proper notice on them. Not naming such persons is a fatal omission. *Stillwell vs. Brammell*, 124—338.
- An affidavit for a tax deed of the service of notice to B, in the actual possession or occupancy of the premises, "and as owner or party interested therein, and as the person in whose name it (land) was assessed," is fatally defective. The affidavit must show that the person served was in fact the owner or person in whose name the property was taxed. It is not sufficient that he was regarded as such. *Stillwell vs. Brammell*, 124—338.
- Affidavit which does not show that the affiant is the purchaser, the purchaser's assignee or agent or the assignee's agent is insufficient. Affidavit which

does not show that no one was in the actual possession or occupation of the land in question or that service has been made on such occupant is insufficient. *Taylor vs. Wright*, 121—455.

Affidavit of notice must show delivery of notice to persons in possession at time of delivery. Affidavit that A B was in possession on the 19th, and that notice was delivered to him on the 20th, is insufficient. *Wisner vs. Chamlerlin*, 117—568.

Failure to make affidavit, or inaccuracy in affidavit, is fatal to tax deed based thereon, regardless of what the real facts may be. Thus, recitation in affidavit of service of notice on J. Mayer, when I. Mayer was the party in interest and actually served, vitiates it. *Gage vs. Mayer*, 117—632.

Affidavit must set out particularly facts showing service of notice. *Davis vs. Gosnell*, 113—121.

Where affidavit for tax deed does not show that notice of purchaser at tax sale was served upon persons in whose names property was assessed, tax deed may be set aside by suit by owner of land to quiet title. *Gage vs. Hervev*, 111—305.

Manner of service and facts relied on to constitute service must be stated in affidavit. *Davis vs. Gosnell*, 113—121, following *Price vs. England*, 109—395.

Oral evidence is inadmissible to aid an affidavit for a tax deed. *Esker vs. Heffernan*, 159—38 (1895).

An affidavit for a tax deed wherein holder of certificate positively states premises were not taxed or assessed in the name of any person, where collector's warrant shows the owner's name is insufficient to show diligent inquiry. *Keeney vs. Glos*, 258—555.

Affidavit must show a compliance with provisions of 216 by direct and positive statement of facts, and the matter of such compliance must not be left to inference from doubtful or equivocal language. *Wilson vs. Glos*, 266—392.

3. Affidavit—Where filed:

Affidavit is to be lodged with sheriff before deed taken out. *Whitney vs. Stevens*, 89—53.

Printer's fee.] Section 218. In case any person shall be compelled to publish such notice in a newspaper, then, before any person who may have a right to redeem such lands or lots from such sale shall be permitted to redeem, he shall pay the officer or person who by law is authorized to receive such redemption money, the amount paid for printer's fee for publishing such notice, for the use of the person compelled to publish such notice as aforesaid; the fee for such publication shall not exceed \$1 for each tract or lot contained in such notice.

Advertising fee should not exceed \$1 per tract. It may be less, but cannot be more. *Gage vs. Bailey*, 115—646.

When entitled to deed.] Section 219. At any time after the expiration of two years from date of sale of any real estate for taxes or special assessments, if the same shall not have been redeemed, the county clerk, on request, and on the production of

the certificate of purchase, and upon compliance with the three preceding sections, shall execute and deliver to the purchaser, his heirs or assigns, a deed of conveyance for the real estate described in such certificate.

Under former statute, held, that tax deed might be executed either by sheriff or his successor in office. *Bestor vs. Powell*, 7—(2 Gil.), 119.

Deed may include several tracts — Fee — Exception.] Section 220. When any person shall hold more than one certificate of purchase at the same sale, and for the same year's tax or special assessment, the clerk shall, on the request of the holder of such certificate, include as many tracts or lots described therein in the deed of conveyance as such person may desire and for which deed the county clerk shall have a fee of 50 cents for each certificate embraced therein: Provided, That no greater fee than \$3.00 shall be charged upon any one deed: Provided, further, that said clerk shall include in such deed not to exceed one lot, block, tract or piece of land as listed, assessed and sold in one description, except in cases where such lot, block, tract or piece of land is owned by one party or person. [As amended by act approved May 13, 1903. In force July 1, 1903. L. 1903, p. 299.

Form of tax deed.] Section 221. The deed so made by the county clerk under the official seal of his office shall be recorded in the same manner as other conveyances of real estate, and shall vest in the grantee, his heirs, and assigns, the title of the property therein described without further acknowledgment or evidence of such conveyance, and said conveyance shall be substantially in the following form:

STATE OF ILLINOIS,)
 } ss.
.....county.

Whereas, at a public sale of real estate for the non-payment of taxes, made in the county aforesaid, on the.....day of....., A. D. 19...., the following described real estate was sold, to wit: (here place description of real estate conveyed); and whereas, the same not having been redeemed from said sale, and it appearing that the holder of the certificate of purchase of said real estate has complied with the laws of the state of Illinois necessary to entitle (insert him, her or them) to a deed of said real estate: Now, therefore, know ye, that I.....county clerk of said county of....., in consideration of the premises and by virtue of the statutes of the state of Illinois in such cases provided, do hereby grant and convey unto....., his heirs and assigns forever, the said real estate hereinbefore described, subject, however, to any redemption provided by law.

Given under my hand and the seal of our court this.....day
of.....A. D. 19....

....., County Clerk.

A deed conveying one vigintillionth part of a lot is void upon its face and does not constitute a cloud upon title. *Petty vs. Beers*, 224—129.

But if the owner comes in and asks to have it removed as a cloud, it is error to decree such removal without reimbursement to the holder of the tax deed. *Jackson vs. Glos*, 243—280.

Where proceedings prior to deed describe land in question by a description which is void for uncertainty, the proceedings also will be void for uncertainty. *Brickey vs. English*, 129—646.

The following description, "W. side N. $\frac{1}{2}$ S. E. N. W. 10 acres Sec. 8, T. 23, R. 10 quantity sold 10 acres," was sufficient in tax deed. *Taylor vs. Wright*, 121—455.

A tax deed held void for uncertainty in description. Description in tax deed reading "part of survey No. 743, claim No. 93, township 5 S., R. 9 West, 3 P. M., Monroe county, Illinois, containing 31 35-100 acres," held void for uncertainty. *Brickey vs. English*, 129—646, following *P. vs. C. and A. R. Co.*, 96—369.

Description of land in tax deed construed by same rules as in deeds between private individuals. *Blakely vs. Bestor*, 13—708.

It is not necessary to the validity of the tax deed, that it be recorded. *Morgan Park vs. Knopf*, 210—453.

Correction of error in one deed cannot be made by issuing another. *Fuller vs. Shedd*, 161—462.

Mandamus does not lie to compel county clerk to issue second tax deed to remedy mistake of purchaser at tax sale. Rule would be different when mistake was made by clerk. *Klokke vs. Stanley*, 109—192.

Tax deed based on judgment for too large amount of tax, even to extent of a few cents, or for tax any part of which is illegal, is void. *McLaughlin vs. Thompson*, 55—249.

Recital in deed of sale of two lots where judgment was against eight lots, was a fatal variance. *Pitkin vs. Yaw*, 13—251.

Tax deed is not patent, and, to constitute it valid conveyance, delivery of it must be proved. *Hulick v. Seovil*, 9—(4 Gil.), 159.

Evidence recorded.] Section 222. County clerks shall record as evidence upon which deeds are issued, the application, all affidavits and notices filed with the application, the certificate of sale, and all other documents and papers filed in compliance with law, and be entitled to the same fee therefor that may be allowed by law for recording deeds. [As amended by act approved May 13, 1903. In force July 1, 1903. L. 1903, p. 299.

It was the duty of the county clerk to record the tax certificate and he is allowed the same fees therefor as are allowed for recording deeds. *Village of Morgan Park vs. Knopf*, 210—453.

Applies to former sales.] Section 223. The foregoing six sections shall apply to all sales of real estate for taxes heretofore

made, as well as to such sales for taxes and special assessments hereafter to be made.

Effect of deed as evidence — Repayment.] Section 224. Deeds executed by the county clerk as aforesaid shall be prima facie evidence¹ in all controversies and suits in relation to the right of the purchaser, his heirs or assigns, to the real estate thereby conveyed of the following facts: First—That the real estate conveyed was subject to taxation at the time the same was assessed, and had been listed and assessed in the time and manner required by law. Second—That the taxes or special assessments were not paid at any time before sale. Third—That the real estate conveyed had not been redeemed from the sale at the date of the deed. Fourth—That the real estate was advertised for sale in the manner and for the length of time required by law. Fifth—That the real estate was sold for taxes or special assessments as stated in the deed. Sixth—That the grantee in the deed was the purchaser or assignee of the purchaser. Seventh—That the sale was conducted in the manner required by law.² [And any judgment for the sale of real estate for delinquent taxes rendered after the passage of this Act, except as otherwise provided in this section, shall estop all parties from raising any objections thereto, or to a tax title based thereon, which existed at or before the rendition of such judgment or decree, and could have been presented as a defense to the application for said judgment in the court wherein the same was rendered, and as to all such questions, the judgment itself shall be conclusive evidence of its regularity and validity in all collateral proceedings,³ except in cases where the tax or special assessments have been paid, or the real estate was not liable to the tax or assessment:]⁴ Provided, that any judgment or decree of court, in law or equity, setting aside any tax deed procured under this Act, or restoring the owner of same to possession, shall provide that the claimant shall pay to the party holding such tax deed the following: All taxes and legal costs, as provided by law, with interest at five per cent per annum, together with subsequent taxes and special assessments paid and the statutory fees and costs incurred; for the service of the notices provided by law which must be served by holders of certificates of sale to occupants, owners or parties interested in real estate sold for taxes, the sum of \$3.00 for each lot, block, tract or piece of land, as listed, assessed and sold in one description; for preparing the affidavit of compliance with laws \$1.00; the actual cost

paid to the county clerk for issuing said tax deed; the actual cost of recording said tax deed; \$1.00 for publication fees for each lot, block, tract, or piece of land as listed, assessed and sold in one description. No final judgment or decree of court in any case either at law or in equity or in proceedings under the eminent domain Act involving the title to or interest in any land in which such party holding such tax deed shall have an interest or setting aside any tax deed procured under this Act shall be entered until the claimant shall make reimbursement to the party holding such tax deed and payments as herein provided in so far as it shall appear that the holder of such deed or his assignors shall have properly paid or be entitled to in procuring such deed.⁵ [As amended by Act approved June 28, 1919. L. 1919, p. 762.

(Portion in square brackets was added by the amendment of 1879 (Laws 1879, p. 252) except words "or decree", which was added in 1885 (Laws 1885, p. 234).)⁶

1. How far failure to show precept or judgment is fatal to prima facie sufficiency of tax deed:

Failure to show in evidence in first instance precept in record no longer fatal to judgment since Act of 1879. Under Sec. 224, as amended by Act of 1879, it is sufficient that tax deed was introduced to make out prima facie case. Prior to the amendment, in order to make a prima facie case, it was necessary to show judgment and precept. *Ranson vs. Henderson*, 114—528. **The contrary was held prior to the amendment of 1879:**

Tax deed is void which is not supported by judgment or precept. *Gage vs. Thompson*, 161—403.

Under this statute a tax deed is not prima facie evidence of the sufficiency of the form and manner of publication, and the proof thereof, and in the absence of evidence of a precept and judgment the tax title is not valid. Whilst a tax deed is, under the statute (Chap. 120, Sec. 124), prima facie evidence of certain facts, the sufficiency of the form and manner of publication and proof of publication are not of those facts. *Gilbreath vs. Dilday*, 152—207 (1894).

In order to sustain tax deed as muniment of title, valid judgment and precept must be shown. The precept is a transcript of judgment record, embracing the covenying order, notice and list of lands against which judgment is rendered, all certified to by clerk. *Bell vs. Johnson*, 111—374.

To establish tax title, valid judgment, precept and affidavit must be proved. *Smith vs. Hutchinson*, 108—662.

Under Act of 1872, a tax deed, to be used as evidence of title, must be supported by valid judgment and precept. *Gage vs. Lighburn*, 93—248.

Tax deed admissible as evidence of title only after proof of requisites of valid sale. *Smith vs. Smith*, 62—493.

A party relying on a tax deed as title must produce a valid judgment against the land for taxes and a precept under which the sale was made. *Williams vs. Underhill*, 58—137.

So under former similar provision it was necessary to prove judgment and precept before tax deed is admissible in evidence. *Hinman vs. Pope*, 6—(1 Gil.), 131; *Baily vs. Doolittle*, 24—577.

A regular tax deed, founded on a valid judgment and precept, is *prima facie* proof of every fact necessary to authorize a recovery upon it. *Spellman vs. Curtenius*, 12—409.

Under former statute, a sheriff's tax deed, based on valid judgment and precept, is conclusive against all except former owner and those claiming under him, but the former owner and persons claiming under him can go back of judgment and show irregularities. *Lusk vs. Harber*, 8—(3 Gil.), 158.

Miscellaneous cases upon the effect of the tax deed as *prima facie* evidence of the sufficiency of the record on which it is founded:

Tax deed is *prima facie* evidence of fact enumerated in statute, and nothing more. To make it evidence of title must introduce in evidence notice provided by Sec. 216. *Kepley vs. Fouke*, 187—163; *Holbrook vs. Fellows*, 38—440.

This section does not dispense with proper allegations as to title in a plea in a suit in chancery. It affects the rule of evidence only; makes tax deed *prima facie* evidence in some cases. *Gage vs. Harbert*, 145—530 (1892).

A tax deed is only *prima facie* evidence of the facts therein mentioned when the controversy or suit in which it is introduced has relation to the right of the purchaser, his heirs or assigns, to the real estate conveyed by the deed. *Pardridge vs. Hyde Park*, 131—537.

Tax deed must be supported by proof of regularity of prior proceedings where not itself made evidence thereof by statute. *Skinner vs. Fulton*, 39—484.

It is presumed that proper proof that certificate was made by publishers was made in trial court in favor of deed. *Dukes vs. Rowley*, 24—210.

If party attacking deed gives collector's report and notice in evidence, any substantial defect therein will destroy *prima facie* case made by deed. *Ballance vs. Curtenius*, 12—409.

Where deed recited that judgment was rendered at May term, 1848, but record of judgment failed to show at what term it was rendered, the deed was not supported by record and was fatally invalid. *Young vs. Thompson*, 14—380.

Judgment held invalid under Revised Statutes of 1845, Chap. 89, Sec. 57, unless record showed that collector's report and certificate of publication were filed and recorded with judgment record. *Dukes vs. Rowley*, 24—210.

Sec. 57 of the Revenue Act of that time required that the clerk of the Circuit Court file the collector's report and certificate of publication, and record the same in a book to be kept for that purpose. It was of this that the deed was not evidence. So under Revised Statutes of 1845, Chap. 89, Sec. 71, held, that deed was not evidence of due filing and recording of collector's report and certificate of publication. *Dukes vs. Rowley*, 24—210.

Provision in former statute requiring deposits of copies of advertisements of sale with Auditor, Treasurer and Secretary of State, held merely directory. *Vance vs. Schuyler*, 6—(1 Gil.), 160.

Auditor's tax deeds:

So where defendant rebuts presumption of proper listing by producing records showing absence of listing of such lands, claimant under deed must affirmatively prove due listing. An Auditor's deed, reciting a sale of land for taxes of 1832, was read in evidence. The defendant assailed the deed by

offering to show that there had been no valid listing of the land for taxation. The diagram introduced was testified to by the Auditor as being all the evidence to be found in the records. This rebutted the presumption of the validity of the deed. *Tibbetts vs. Job*, 11—453; *Schuyler vs. Hull*, 11—462.

Sec. 9 of January 19, 1829—"deed from the Auditor of Public Accounts shall be evidence of the regularity and legality of the sale, until the contrary shall be made to appear"—alters common-law requirement that claimant under proceedings should show regularity thereof. *Graves vs. Bruen*, 11—431.

Auditor's tax deed for land sold under law in force in 1827 is not evidence of title, without proof aliunde that all steps prior to sale have complied with statute. *Garrett vs. Wiggins*, 2—(1 Seam.), 335; *Hill vs. Leonard*, 5—(4 Seam.), 140; *Wiley vs. Bean*, 6—(1 Gil.), 302; *Irving vs. Brownell*, 11—402; *Goewey vs. Urig*, 18—238; *Arrowsmith vs. Burlingim*, 4 McLean, 489.

Auditor's tax deed, under Revenue Act of 1829, held *prima facie* proof for plaintiffs in ejectment claiming under it without other evidence connected with it. *Vance vs. Schuyler*, 6—(1 Gil.), 160; *Messenger vs. Germania*, 6—(1 Gil.), 631.

Auditor's tax deed, like patents from United States and from State, is admissible in evidence without proof of execution. *Graves vs. Bruen*, 6—(1 Gil.), 167.

Under former statute, held, that Auditor's tax deed was *prima facie* proof of assignment of certificate of purchase to grantee, and that such assignment need not be proved prior to producing deed in evidence. *Wiley vs. Bean*, 6—(1 Gil.), 302.

2. "That the sale was conducted in the manner provided by law":

Mere error, where not jurisdiction, e. g., variance of amount bid at sale from amount of judgment, does not vitiate proceedings. *Frew vs. Taylor*, 106—159.

Abbreviations in describing premises in various proceedings, e. g., "pt." for part, "frm" for from, "ft" for feet, do not vitiate proceedings. Here the assessment book of the county assessor was offered, the notice and return of the collector for the taxes, the judgment for taxes, the precept and the sheriff's deed. The abbreviation appeared in these, and it was claimed rendered the property description uncertain. *Blakely vs. Bestor*, 13—708.

The deed is *prima facie* proof under this section that land in question was sold at the time and place and in the manner required by law. *Taylor vs. Wright*, 121—455.

Tax deed is invalid where there is no evidence that the day on which the precept was made and on which the sale opened was the day on which the sale was advertised, as it cannot be presumed that sale was advertised to take place on a certain date. *Jackson vs. Glos*, 249—388.

3. Judgment conclusive in collateral proceedings:

It was objected that the amount of costs was not correctly stated in the report and judgment. Held, amount of costs on a tax sale cannot be called in question in collateral proceeding, though might be ground for reversal on direct proceeding. *Ballance vs. Curtenius*, 12—409.

The carrying forward to the judgment record of too large an amount as back taxes will not invalidate a tax sale, where it appears that the omission

of interest on a drainage assessment renders the aggregate of the tax less than is authorized by law. *Hammond vs. Carter*. 155—579 (1895).

4. Exception:

The land owner may raise objections by way of collateral attack where a judgment for taxes includes either illegal taxes or illegal costs under the clause; "except, etc., or the real estate was not liable to the tax or assessment." Under this clause the objection that property was exempt is proper. *Cemetery Co. vs. People*, 204—468.

Owner is not estopped by tax-sale judgment from showing that it was fraudulently too large or excessive, where did not appear and contest. *Gage vs. Lyons*, 138—590 (1891).

Chancery will set aside tax deed for fraud practiced by purchaser on owner. *Palmer vs. Douglas*, 107—204.

Incorporated village or city has no power to levy taxes for payment of salaries of township officers, even though incorporated municipality and township are co-extensive. Tax so levied is illegal, and sale therefore void. And this section does not cure it. *Drake vs. Ogden*, 128—603.

Estoppel of tax deed under this section does not extend to action of debt in personam; validity of tax must be established to sustain such action. *O. and M. R. Co. vs. Highway Com'rs*, 117—279.

5. Payment to holder of a tax deed as a condition precedent to a decree setting it aside:

Before the amendment of 1919 the proviso was thus worded: "Provided, That any judgment or decree of court setting aside any tax deed procured under this act, shall provide that the claimant shall pay to the party, holding such tax deed, all taxes and legal costs, together with all penalties, as provided by law, as it shall appear the holder of such deed or his assignors, shall have properly paid or be entitled to in procuring such deed, before such claimant shall have the benefit of such judgment or decree. The following decisions dealt with the proviso as thus worded:

In the proviso to this section, "penalty" does not mean the per cent. on the purchase money required under the statute to be paid to effect a redemption, but requires only that the purchaser or holder of the tax title should receive as condition of having tax deed set aside, the amount paid at the sale of the land for taxes, subsequent taxes paid, and interest at the legal rate from the dates of such payments. *Gage vs. Light Co.*, 194—30.

Penalty provided by statute in case of redemption will not be awarded in fixing the equitable terms of decree canceling tax deed. *Glos vs. Gerrity*, 190—547.

Reimbursement for taxes, etc., is not essential condition to removing tax deed as cloud where it appeared that all the taxes had been paid by the claimant on the lot and the holders of the tax deeds also paid taxes on the same piece upon an erroneous description. *Ely vs. Brown*, 183—603.

Reimbursement paid at tax sale with all subsequently paid taxes and assessments with interest, is proper condition precedent to removing cloud of tax deed. *Lauer vs. Weber*, 177—122.

Amounts paid at the tax sale and taxes charged upon the land paid by purchaser with interest at 6 per cent. should be decreed against a complainant in setting aside a tax title. *Cotes vs. Rohrbeck*, 139—532 (1891).

The complainant made a tender of more than what was due as condition to setting aside deed, but the court, while noting that, does not order pay-

ment of the amount due. That was error. The holder of deed, however, was compelled to pay costs, having refused the tender. *Gage vs. Dupuy*, 137—652 (1890).

This cites *Gage vs. Pirtle*, 124—502. The "penalties" in the proviso to Sec. 224 meant penalties which the holder of the tax deed or his assignors shall have paid or be entitled to in procuring his tax deed, or otherwise. The money paid on redemption is not the same as money paid by the tax sale purchaser.

Therefore, the 100 per cent. penalty for redemption is not proper in setting aside tax deed for defective notice (Sec. 216). *Gage vs. Dupuy*, 137—652 (1890).

Defendant should not pay costs in an action to set aside the tax deed as a cloud, where the plaintiff paid all the taxes legally extended and the amount for which the lots sold, costs of tax sale and 6 per cent., because not averred that complainant made tender. *McCartney vs. Morris*, 137—481 (1890).

The condition of the equitable relief granted upon the setting aside of a tax deed should be the payment of the amount paid at the tax sale, subsequent taxes paid and interest. An amount equal to the redemption money need not be paid. *Gage vs. Pirtle*, 124—502.

The penalties to be paid under the proviso to this section are penalties which the holder of the tax deed, or his assignors, shall have paid or be entitled to in procuring the tax deed. Money paid on redemption is not money paid by the tax-sale purchaser, or which he was entitled to in procuring his tax deed, or otherwise. It is money paid by the land-owner, and paid, not to procure, but to prevent, a tax deed. It is not money the tax-sale purchaser was ever entitled to have. *Gage vs. Pirtle*, 124—502.

Bill to set aside illegal tax deeds from tax sale need not contain offer to pay redemption money and interest thereon. *Gage vs. Waterman*, 121—115.

Proviso to clause 7, Sec. 224, requiring that judgment shall direct plaintiff to refund to defendant taxes and costs paid by him and penalties recovered by him, does not apply to judgment in action or ejectment. *Riverside Co. vs. Townshend*, 120—9.

He who seeks to set aside tax sale for mere irregularities as cloud on his title must reimburse purchaser amount he has paid with 6 per cent. interest. *Gage vs. Nichols*, 112—269.

Complainant in chancery suit to set aside tax sale, e. g., to perpetually enjoin county clerk from issuing deed on such sale, in order to entitle himself to relief, must refund to purchaser taxes paid, with interest. *Peacock vs. Carnes*, 110—99.

Bill to redeem from tax sale must offer to pay purchase money, taxes paid by purchaser, and interest thereon. *Moore vs. Wayman*, 107—192.

The bill was filed October 10, 1878; before the time allowed by the statute for redemption from sales; a portion of the tax consisted of certain city taxes which were not a lawful charge on the property. Complainants offered to refund or pay the holder of the tax deed the amount of lawful taxes embraced in the judgment, and all subsequent taxes paid by him, with 6 per cent. interest. They did not, however, make tender until after suit commenced. Held, that complainant pay amount lawfully due, with 6 per cent. interest, and costs. *Gage vs. Nichols*, 135—428 (1890); *Gage vs. Busse*, 102—592.

- Reimbursement of money advanced for taxes upon which deeds were based, where relies upon title by adverse possession, not prerequisite to their cancellation. *Simons vs. Drake*, 179—65.
- Reimbursement of money advanced for taxes upon which deed removed was based should be ordered where complainant was in possession of premises, claiming as owner at time of sale. *Simons vs. Drake*, 179—66.
- Right to sue to set aside tax sale is not confined to original owner, but may be exercised by mortgagee or any person having such an interest as would entitle him to redeem. *Miller vs. Cook*, 135—190 (1890).
- Tender to or offer to pay lawful taxes embraced in the judgment and subsequent taxes with interest must be made by party asking court of chancery to set aside tax sale as cloud on title. *Miller vs. Cook*, 135—190 (1890).
- Statute providing that person cannot set up invalidity of tax sale without previous tender or payment of taxes is unconstitutional. *Senichka vs. Lowe*, 74—274.
- Act of 1861 requiring payment of redemption money and interest as condition precedent to questioning validity of tax deed except for specified purposes, held unconstitutional, because amounts to compelling a party to buy justice. Similar provision in Act of 1845 (R. S. 1845, p. 448, Sec. 73) held unconstitutional and a "dead letter." *Reed vs. Tyler*, 56—288.
- Under Sec. 224 of Revenue Act, the tax deed is not prima facie evidence of the amount the holder paid. That must be proved aliunde. *Glos vs. Kelley*, 212—314.
- The General Assembly adopted an act in 1861 which provided that no tax deeds shall be assailed except on ground that said taxes paid before sale, that real estate not subject to taxation, or that redeemed from sale, or if notice necessary under Constitution, that it was not given; in all other cases, party wishing to contest had to deposit redemption money, with 10 per cent. interest. Held, that this was not retroactive and it would violate Constitution by depriving of property without due course of law, to hold it so. *Conway vs. Cable*, 37—82.
- Bill for reimbursement by tax buyer will not be entertained. The owner got judgment in ejectment. This is a separate bill for reimbursement of taxes. *Gage vs. Eddy*, 186—440.
- Mere introduction by defendants to application to register title, without proof as to what amount, if any, he paid on account of taxes does not authorize reimbursement. *Tobias vs. Kaspyk*, 247—80.
- Holder of invalid tax deed is only entitled to reimbursement when his tax title is attacked and set aside in a proceeding brought for that purpose by the owner of the land. *Chicago vs. Piek*, 251—594; *O'Connell vs. Sanford*, 255—49.
- Holder of invalid tax deed not entitled to reimbursement out of compensation awarded in condemnation proceeding instituted against holder of legal title. *Chicago vs. Piek*, 251—594; *Sanitary Dist. vs. Murphy*, 261—269.
- The deposit of gross sum for all the holders of tax title is a sufficient tender to relieve from any subsequent costs made by defendants in attempting to adjust their conflicting claims to reimbursement fund. *Donham vs. Joyee*, 257—112.
- Party not entitled to have tax deed set aside without reimbursing holder thereof for the money properly expended in procuring it. *Kuhn vs. Glos*, 257—289, 293.

If complainant in suit to remove tax deed as a cloud, makes no tender before filing the bill, it is error on setting aside deed to require hold of tax deed to pay costs. *Kuhn vs. Glos*, 257—289.

Where notice of tender in open court is given, and defendant fails to appear and money due defendant and unknown owners is deposited with clerk and notice given defendant of such deposit, there is sufficient tender as justifies charging subsequent costs to defendant. *Wright vs. Glos*, 264—261.

Deed should include reimbursement for fees paid for recording the evidence of sales and issuance of tax deeds and fees for recording the deeds. *Judson vs. Freutel*, 266—24.

Holder of tax deed entitled to be reimbursed for taxes paid subsequent to the time she received her deed. *Strebel vs. Glos*, 271—65.

Before judgment setting aside tax certificate can be rendered, party seeking such relief must pay all legal cost and taxes, even though there be irregularities in levying and collecting the taxes. *Whitaker vs. Iron*, 206A. 124.

Deed awarding to assignee of owner of land sold for taxes a surplus remaining after such sale does not set aside a tax deed. *People vs. Ogden*, 195A. 564.

6. Effect of amendment of 1879:

Amendment of 1879 to this section does not affect judgment prior to its passage. *Harland vs. Eastman*, 119—22.

Amendment of May 31, 1879, does not apply to case in which default was entered before taking effect of amendment, and final judgment was entered after such taking effect. *Stamposki vs. Stanley*, 109—210.

This provision does not apply to deed upon validity of which Supreme Court has passed before enactment of proviso. *Riverside Co. vs. Townshend*, 120—9.

Effect of purchase by one whose duty it was to pay taxes:

Purchase by one whose duty it is to pay taxes operates as payment of taxes only. *McChesney vs. White*, 140—330 (1892).

Tax deed may be avoided by showing that grantee was in position making it his duty to pay taxes. *Blakely vs. Bestor*, 13—708.

Person in possession not therefore bound to pay taxes. *Blakely vs. Bestor*, 13—708.

Owner of equity of redemption considered owner of land until mortgagee enters for condition broken, and cannot acquire title by purchasing at tax sale. *Ralston vs. Hughes*, 13—469.

Owners and persons under legal or moral obligation to pay taxes and assessments cannot become purchasers at tax sale. *Oswald vs. Wolf*, 129—200.

Person whose duty it is to pay taxes cannot acquire title by purchasing at tax sale. *Lewis vs. Ward*, 99—525.

Purchaser, under agreement with vendor to pay taxes, cannot thereby acquire title against vendor. *Baily vs. Doolittle*, 24—577.

The same rule would probably be held to apply to one under a legal obligation to pay the taxes who afterwards purchases an outstanding tax title acquired by a stranger. *Oswald vs. Wolf*, 129—200.

Mortgagee of invalid tax deed holder takes title subject to infirmities. *Gonzalia vs. Bartelman*, 143—634 (1892).

It is duty of assignee of mortgagor to pay taxes and payment gives him no additional right to premises. *Medley vs. Elliott*, 62—532.

Agent, in paying taxes for principal, cannot acquire title against him. He is a trustee if he takes title in his own name. *Barton vs. Moss*, 32—50.

Agent cannot acquire tax title. *Gonzalia vs. Bartelman*, 143—634 (1892).

Widow of tenant in common cannot become the purchaser of a tax title where she neglected to pay the taxes on the property. *McChesney vs. White*, 140—330 (1892).

Tenant for life is bound to pay taxes unless instrument creating estate relieves him of that obligation. *Waldo vs. Cummings*, 45—421.

Persons asserting invalid claim of ownership may acquire tax title and assert it for his own benefit. *Pickering vs. Lomax*, 120—289.

But owner who acquired subsequent to levy of tax, and who assumed no obligation in reference thereto, is not affected by foregoing rule and may buy at such sale. *Oswald vs. Wolf*, 129—200.

If lands of A and lands of B are sold together, A cannot acquire title by purchasing at tax sale, as he should have paid tax on his own lands before sale. *Lewis vs. Ward*, 99—525.

Miscellaneous.

Law in force at date of sale controls effect of tax deed, although deed is made after law is repealed and new law enacted. *Garrett vs. Wiggins*, 2—(1 *Scam.*), 335.

Tax deed not reformed in equity, because it is a purely technical title. *Altes vs. Hinekler*, 36—265.

Marshaling securities does not apply in favor of tax-title holder against mortgagee, to compel him to resort to a fund that will not affect tax title. *Miller vs. Cook*, 135—190 (1890).

Payment of taxes previous to sale renders same void. *Perkins vs. Bulkley*, 166—231.

When deed must be taken out.] Section 225. Unless the holder of the certificate for real estate purchased at any tax sale under this act, takes out the deed as entitled by law, and files the same for record within one year from and after the time for redemption expires, the said certificate or deed, and the sale on which it is based, shall, from and after the expiration of such one year, be absolutely null. If the holder of such certificate shall be prevented from obtaining such deed by injunction or order of any court, or by the refusal of the clerk to execute the same, the time he is so prevented shall be excluded from the computation of such time. Certificates of purchase and deeds executed by the county clerk shall recite the qualifications required in this section.

Application of section above. Here did not take out deed for twenty-two years.. *Gage vs. Parker*, 178—459.

Tax deed to be effective must be taken out within one year after expiration of period for redemption. *Fuller vs. Shedd*, 161—496.

Court is not authorized to make exceptions in other cases than those enumerated in this section, e. g., it is not authorized to sanction the issue of a tax deed more than five years after tax sale to correct an alleged mistake of the clerk in making deed out to wrong party. *Gage vs. Reid*, 118—35.

Repealed.] Section 226. [Repealed by act approved May 29, 1879. In force July 1, 1879. L. 1879, p. 250.

Redemption or purchase of forfeited property.] Section 227. If any person shall desire to redeem or purchase any tract of land or lot forfeited to the state, he shall apply to the county clerk, who shall issue his order to the county collector, directing him to receive from said person the amount due on said tract or lot, which shall in no case be less than ten per cent. on all taxes heretofore forfeited, and twenty-five per cent. on all taxes hereafter levied and forfeited, in addition to the tax, special assessments, interest and printers' fees due thereon, particularly describing the property and setting forth the amount due; and upon presentation of said order to the county collector, he shall receive said amount and give the person duplicate receipts therefor, setting forth a description of the property and the amount received—one of which shall be countersigned by the county clerk, and when so countersigned, shall be evidence of the redemption or sale of the property therein described, as the case may be, but no such receipt shall be valid until it is countersigned by the county clerk. The other receipt shall be filed by the county clerk in his office, and said clerk shall make a proper entry of the redemption or sale of the property on the books in his office, and charge the amount of the redemption or sale money to the county collector. In cases of sales, the collector and clerk shall make the receipt in the form of a certificate of purchase. Property purchased under this section shall be subject to redemption, notice, etc., the same as if sold at regular public tax sale. [See Section 225. As amended by act approved May 31, 1879. In force July 1, 1879. L. 1879, p. 254.

Section does not deprive owner of property forfeited of constitutional right of redemption nor violate Sec. 4, Art. 9 of constitution prohibiting sale for taxes without a court order or judgment. *Zicarelli vs. Stuckart*, 277—26.

Provisions of this section provides a speedy and inexpensive method of redemption or sale without resorting to chancery proceedings provided for in Sec. 253 and it does not conflict with that section. *Zicarelli vs. Stuckart*, 277—26.

Report and payment of money collected on forfeited lands.] Section 228. It shall be the duty of the county clerk, annually, when he makes return of the amount of taxes levied, to report to the auditor the amount due the state on account of the redemption and sales of such forfeited property, and said auditor shall charge the same to the collector. If the collector who received

said redemption or sale money shall be succeeded in office, he shall pay the amount in his hands over to his successor, who shall pay said amount into the state treasury when he settles for the taxes of the current year.

Addition to Current Tax of Amount Due for Forfeiture — Sale.] Section 229. The amount due for general taxes and special assessments on lands and lots previously forfeited to the State and remaining unpaid on the first day of November, and on lands and lots on which such special assessments were withdrawn from collection, shall be added to the tax of the current year; and the amount thereof shall be reported against the county collector with the amount of taxes for said year; and the amount so charged for said forfeitures on general taxes and special assessments shall be placed on the tax books, collected and paid over in like manner as other taxes. The county collector is hereby authorized to advertise and sell said property in the manner hereinbefore required by this Act, as if said property had never been forfeited to the State; and the county, city, town or school district may, by their agent attend such sale for taxes and buy said lands and acquire the same rights that individuals now have under the law, and acquire, hold, sell and dispose of said title thereto the same as and in the same manner as individuals may do under the laws of this State, in case of sale for taxes. Said additions and sales shall be continued from year to year until the taxes and special assessments on said property are paid, by sale or otherwise. [As amended by Act filed June 28, 1917. L. 1917, p. 658.

Back taxes for forfeited property need not be stated separately for each year. P. vs. Reat, 107—581.

If lands have been forfeited to State, whether in due form or not, interest, penalty, etc., with back tax, should be added to tax for current year. Belleville Nail Co. vs. P., 98—399.

Suit for tax on forfeited property.] Section 230. The county board may, at any time, institute suit in an action of debt in the name of the People of the State of Illinois in any court of competent jurisdiction for the whole amount due for taxes and special assessments on forfeited property; or any county, city, town, school district or other municipal corporation to which any such tax or special assessment may be due, may, at any time, institute suit in an action of debt in its own name, before any court of competent jurisdiction, for the amount of such tax or special assessment due any such corporation on forfeited property, and prosecute the same to final judgment. The county board may also, at

any time, institute suit in an action of debt in the name of the People of the State of Illinois, in any court of competent jurisdiction against any person, firm or corporation, for the recovery of any personal property tax due from such person, firm or corporation, and in any such suit for the recovery of personal property tax, the return of the county collector that such taxes are delinquent, shall be prima facie evidence that such taxes are due and unpaid, but the fact that such taxes are due and unpaid may be proven by other competent testimony. This Act shall apply to all taxes heretofore levied against any person, firm or corporation and now upon any assessment book or roll, and on the sale of any property following such judgment on execution or otherwise, any such county, city, town, school district or other municipal corporation, interested in the collection of said tax, may become purchaser at such sale of either real or personal property, and if the property so sold is not redeemed (in case of real estate) may acquire, hold, sell and dispose of the title thereto, the same as individuals may do under the laws of this State, and in any such suit or trial for forfeited taxes, the fact that real estate or personal property is assessed to a person, firm or corporation, shall be prima facie evidence that such person, firm or corporation was the owner thereof, and liable for the taxes for the year or years for which the assessment was made, and such fact may be proved by the introduction in evidence of the proper assessment book or roll, or other competent proof. [As amended by Act filed June 28, 1917. L. 1917, p. 658.]

What court has jurisdiction.

Suit under above may be brought in proper case before justice of the peace. *Kepley vs. Jansen*, 107—79.

People not obliged to proceed in probate court to recover taxes due upon property of estate assessed while in hands of executor or administrator. *People vs. Hibernian Bank Ass'n*, 245—523.

Tax is not a contract obligation merely because statute allows its recovery in action of debt and the municipal court of Chicago has no jurisdiction of suit for taxes on ground of implied contract. *People vs. Dummer*, 274—637.

Form of declaration.

In a proceeding in debt against a corporation, under Sec. 230 of the revenue law, the pleader must set out that the place of assessment was where the company's principal office was located. *Gas Works vs. People*, 156—388.

Declaration to recover delinquent personal property tax must show that it is due and owing in that county, and levy by proper authority on property owned by defendant on the first day of May of that year. *Ottawa Gas L. Co. vs. P.*, 138—336 (1891).

Declaration should state year for which tax was levied, and that defendant was owner of property on May 1st in that year. *Biggins vs. P.*, 96—381.

To sustain action plaintiff must aver and prove that defendant was owner of forfeited property on May 1st of year for which tax was assessed. *P. vs. Winkelman*, 95—412.

Listing of personalty must be where found or at domicile of owner, and capital stock of corporation at the place where business is transacted, and a suit to recover delinquent taxes must show this fact. *Ottawa Gas L. Co. vs. P.*, 138—336 (1891).

Declaration for delinquent personal tax, not showing severally the amounts due severally for each year, cannot be attacked by demurrer. *Ottawa Gas L. Co. vs. P.*, 138—336 (1891).

Declaration in action of debt for taxes, must state facts from which the legal liability, under the statute results as a conclusion of law. *Carney vs. People*, 210—434.

Statement that plaintiff's claim is for personal property taxes for the year A. D. 1914 levied and extended against the assessment of defendant's personal property in two of W., in C. Cook County, Illinois, as appears for personal property tax warrants in volume 2, page 38, line 15, is sufficient in suit in municipal court. *People vs. Brodsky-Palman-Gelber Co.*, 280—168.

Proofs:

The collector's tax warrant, together with the tax judgment, sale, forfeiture and redemption record, is sufficient evidence of the assessment and levy of the taxes, the amount of the same, the years in which they were assessed and levied, and that the taxes were due and unpaid, and that the lands in question were forfeited to the State. A certified copy of the tax judgment, sale, redemption and forfeiture record, together with proof that the defendants were the owners for those years, makes a prima facie case. *Cemetery Co. vs. People*, 204—468.

The tax-payer is not estopped from contesting the legality of a tax in an action of debt against him because of a judgment against land by default for delinquent taxes. *Cemetery Co. vs. People*, 204—468.

In an action of debt, introduction of certified copy of tax collector's warrants, the tax judgment, sale, redemption, and forfeiture record, makes a prima facie case and established to that extent the ownership of the property in question. *Harding vs. People*, 202—122.

In an action of debt, the provision in Sec. 232 that the person against whom property is assessed shall be regarded prima facie as the owner, is for the benefit of the people, and the people may elect to waive this benefit to show ownership in another. "Owner" has been defined as one who has the usufruct, control or occupation of land with claim of ownership. *Coombs vs. People*, 198—586.

In action of debt in personam to recover tax: 1. Valid tax must be established. 2. Must be due. Estoppel of tax deed under Sec. 224 does not extend to this action. *O. and M. R. Co. vs. Highway Commissioners*, 117—279.

Character of remedy:

Remedy under this section is purely personal, and judgment is personal and may be levied on property subject to execution. *Greenwood vs. Town of La Salle*, 137—225 (1891).
137—225 (1891).

Judgment in personam in suit under this section differs in no matter from an ordinary judgment rendered in the Circuit or County Court in an action

of debt or assumpsit. The plaintiff, who recovered the judgment, has the right to collect it by execution in the same manner that any other judgment might be collected. *Byrne vs. Town of La Salle*, 123—581.

Lien of judgment recovered in action, under above, for taxes due on several tracts, is that of ordinary judgment, and is junior lien of prior mortgage. *Kepley vs. Jansen*, 107—79.

County collector's proceeding for collection of a tax is a civil proceeding for the collection of debt, and such action may be maintained under this section. *People (ex rel.) vs. St. Louis Merchants Bridge Co.*, 282—408.

Miscellaneous:

Personal liability may be enforced under this section, although irregularities have intervened in the proceedings which will be fatal to a tax sale. *Greenwood vs. Town of La Salle*, 137—225 (1891).

Suit in personam to recover tax on forfeited property: Irregularities in forfeiture immaterial, so long as there was a forfeiture in fact. *Sanderson vs. Town of La Salle*, 117—171.

After a judgment in personam rendered for taxes, the tax debtor cannot inaugurate a proceeding under Sec. 203 and have his land or lots sold to the highest bidder, and thereby relieve himself from personal liability to pay his taxes. Such a proceeding will have no effect on the judgment. *Byrne vs. Town of La Salle*, 123—581.

But the purchaser under execution on personal judgment in favor of State for taxes, failing to acquire any title, may have such sale set aside, and be subrogated to the further rights of the State to enforce such judgment in personam against the equitable assets of defendant, may proceed in personam and in rem at same time; but when the taxes are once paid, by whatever means, the proceeding in rem is not available for the purpose of enforcing rights of third parties. *P. vs. Winter*, 116—211.

Action of debt to recover tax due which has been unavailingly attempted to be collected by sale of property is cumulative remedy, and prior judgment bars it only when satisfied. *P. vs. Davis*, 112—272.

Statute does not make taxes due on one tract lien on another tract. *Kepley vs. Jansen*, 107—79.

Personal judgment for taxes does not affect lien of tax on land or right to judgment against land for tax. *P. vs. Stahl*, 101—346.

Fact that property is assessed too high no defense to action for debt for taxes. *People vs. Hibernian Bank Ass'n*, 245—522.

Action of debt by People to recover taxes is not barred by Statute of Limitations. *People vs. Hibernian Bank Ass'n*, 245—523.

In suits based on this section property owner may avail himself of any defense that might be made on application by collector for judgment for delinquent taxes and this would include defense that tax is unauthorized by law or assessed upon property not subject to taxation or that capital stock tax was unauthorized because State Board failed to deduct value of corporation's tangible property. *Neal Institute Co. vs. Stuckart*, 281—526.

Rules of change of venue in an action for debt apply to a proceeding for the collection of a tax, and in such proceedings the People are entitled to a change of venue because of prejudice and interest of the judge. *People (ex rel.) vs. St. Louis Merchants Bridge Co.*, 282—408.

Suit for personal property tax:

A suit to collect a personal property tax not a lien existing by virtue of the warrant held by the collector, must be brought by the county board in the name of the People. *Loeber vs. Leininger*, 175—490.

Suit for delinquent personal property tax may be for all taxes due and unpaid, whether a part is due the State, part to the county and part to municipal corporations. *Ottawa Gas L. Co. vs. P.*, 138—336 (1891).

The right of recovery is for all the personal property taxes due from the defendant, and, when recovered, it will be the duty of the county board to distribute them to several municipal corporations to which they belong, as would have to be done in case of a recovery by the county board, under the first clause of the section, of the whole amount of taxes due on forfeited property. *Dalby vs. P.*, 124—66.

Liability for unpaid personal tax may be shown aliunde return of delinquent tax collector. *Ottawa Gas L. Co. vs. P.*, 138—336 (1891).

The return of the county collector is prima facie evidence that personal property tax is due and unpaid. If his return is not in evidence, the liability may be shown by proving the assessment, the extension of the taxes, and their nonpayment. *Carney vs. People*, 210—434.

Return of collector is prima facie evidence only, that personalty tax is due and unpaid. *Ottawa Gas L. Co. vs. P.*, 138—336 (1891).

Corporation stock tax is a personal property tax. *Ottawa Gas L. Co. vs. P.*, 138—336 (1891).

Constitutionality of this Act is reaffirmed. *Ottawa Gas L. Co. vs. P.*, 138—336 (1891).

Under the circumstances of this case, it is not a valid objection to the maintenance of an action of debt under the statute that the property was assessed to the owner, and not to the agent who had the property in his charge. *Dalby vs. P.*, 124—66.

Interest:

Interest can only be recovered at 6 per cent. *Greenwood vs. Town of La Salle*, 137—225 (1891).

Homestead exemption:

Homestead exemption good against judgment in personam for taxes. *Douthett vs. Winter*, 108—330.

Final settlement of county collector—Statement to county clerk.] Section 231. On or before the third Monday in June, annually, the county collector shall make out and file with the county clerk a statement in writing, setting forth, in detail, the name of each person charged with personal property tax which he has been unable to collect, by reason of the removal or insolvency of the person charged with such tax, the value of the property, and the amount of tax, the cause of inability to collect such tax, in each separate case, in a column provided in the list for that purpose. Said collector shall, at the same time, make out and file with the county clerk a similar detailed list of errors in assessment of real estate, and errors in footing of tax books, giving in each case a description of the property, the valuation and amount of several taxes and special assessments, and cause of error. The

truth of the statements contained in such lists shall be verified by affidavit of the county collector. County collectors, in cases of removals and insolvencies, may give, as the cause of inability to collect, the same cause as sworn to by the town or district collectors, stating in their return the fact that such was the statement made by the town or district collector, and that such tax still remains uncollected.

Back taxes without any increase for costs are to be added to the current taxes, "and so when the forfeited taxes for the year 1875 are added to the current taxes for the year 1876, or the forfeited taxes for the year 1876 are added to the current taxes for the year 1877, the forfeiture for each of those years is of a single item, including current and back taxes, and single costs upon the whole, and separate charges for costs for current and for back taxes are not chargeable in each succeeding year." *Harland vs. Eastman*, 119—22.

Prior to Act of 1879 10 per cent. provided for by statute should be computed only on the taxes due, not on the penalties which may have accumulated from year to year. *Gage vs. Williams*, 119—563; *Harland vs. Eastman*, 119—22.

Under former statute, settlement was prima facie proof of balance due, and settlement might be opened as if made between individuals, i. e., not bound by mistake. *Washington County vs. Parlier*, 10—(5 Gil.), 232.

Credit on forfeited property — Printer's fee.] Section 232. If any lands or lots shall be forfeited to the state for taxes or special assessments, the collector shall be entitled to a credit in his final settlement, for the amount of the several taxes and special assessments thereon—the county to allow the amount of printers' fees thereon, and be entitled to said fees so allowed, when collected.

Settlement with county board.] Section 233. On the third Monday in June, annually the county board shall settle with and allow the county collector credit for such allowance as he may be legally entitled to.

When collector to account with clerk.] Section 234. If there be no session of the county board held at the proper time for settling and adjusting the accounts of the county collector, it shall be the duty of the collector to file the lists with the county clerk, who shall examine said lists and correct the same, if necessary, in like manner as said board is required to do. Said county clerk shall make an accurate computation of the value of the property and the amount of the delinquent tax and special assessments returned, for which the collector is entitled to credit.

Clerk to certify to auditor.] Section 235. The county clerk shall immediately, in either case, certify to the auditor of public accounts the valuation of property, and the amount of state taxes due thereon, for which the collector may be allowed credit.

Clerk to certify to local authorities, etc.] Section 236. The county clerk shall also, at the same time, certify to the several authorities or persons with whom the county collector is to make settlement, showing the valuation of property and amount of taxes and special assessments due thereon allowable to said collector in the settlement of their several accounts.

Credits on final settlement—Examination of accounts, etc.] Section 237. The auditor and other proper authorities or persons shall, in their final settlements with the collector, allow him credit for the amount so certified: Provided, that if the auditor or such other proper authorities or persons shall have reason to believe that the amount stated in said certificate is not correct, or that the allowance was illegally made, he or they shall return the same for correction; and when the same shall appear to be necessary, in the opinion of the auditor or such other proper authorities or persons, he or they shall designate and appoint some competent person to examine the collector's books and settlement, and the person so designated and appointed shall have access to the collector's books and papers, appertaining to such collector's office or settlement, for the purpose of making such examination.

Final order—Corrections, etc.] Section 238. In all cases when the adjustment is made with the county clerk, the county board shall, at the first session thereafter, examine such settlement, and if found correct shall enter an order to that effect; but if any omission or error is found, said board shall cause the same to be corrected, and a correct statement of the facts in the case forwarded to the auditor and other proper authorities or persons, who shall correct and adjust the collector's accounts accordingly.

Partial settlement of county collectors—April statement to clerk.] Section 239. On or before the tenth day of April, annually, after he has made settlement with town or district collectors, the county collector shall make a sworn statement, showing the total amounts of each kind of tax received by him from town or district collectors, and the total amount of each collected by himself—which statement shall be filed in the office of county clerk. [As amended by act approved May 3, 1873.]

Clerk to notify auditor, etc., amount due them.] Section 240. The clerk shall immediately, on the receipt of such statement, certify to the auditor and to other proper authorities or persons, the amount for which the collector is required to settle with them severally.

April payment to state treasurer.] Section 241. The county collector shall, on or before the fifteenth day of April following, pay over to the state treasurer the taxes in his hands, payable to the state treasury, as shown by the statement required by section 239, of this act. [As amended by act approved May 3, 1873.

Effect of failure of collector to obtain judgment.] Section 242. The failure of any county collector to obtain judgment shall not prevent him from presenting his statement of credits, and making settlement for taxes and special assessments in his hands, at the time required by this act; but if, from no fault of the collector, he fail to obtain judgment and sale of delinquent real estate at the time required by this act, shall be allowed, in his settlements, a temporary credit for the amount of taxes and special assessments in such delinquent list, which delinquent taxes and special assessments shall be accounted for and paid immediately after sale is had.

April payment to local authorities — Proviso as to Fees.] Section 243. The county collector shall on the first day of April and the first day of each and every month thereafter, pay over to the other proper authorities or persons the amounts in his hands and payable to them as taxes, not theretofore paid over: Provided, that in counties under township organization, where no town collectors are elected, no fees or commissions shall be deducted by the county collector from taxes collected by him and heretofore authorized to be collected by town collectors, and all such taxes collected shall be paid over in full to the proper authorities or persons authorized by law to receive the same.

Any county collector who shall fail to pay over the amount of taxes due and payable, at the time or times required by this section, shall be subject as a penalty for such failure to pay a sum of money equal to the interest on such amount at the rate of one-tenth of one (1) per cent per day from the time such amount becomes due and payable until the same is paid; and the sureties upon the official bond of such collector shall be liable for the payment of such penalty. The penalty in this section provided may be recovered in an action of debt against such collector and his sureties aforesaid, in the name of the people of the State of Illinois, in any court of competent jurisdiction, and the amount of the penalty, when recovered, shall be paid into the county treasury: Provided, however, that this section shall not invalidate or increase the liability upon the bond of any county collector in force prior to the passage of this Act, and that to such extent as its ap-

plication to any such existing bond would result in invalidating or increasing the liability thereon, this section shall be inapplicable thereto. [As amended by act filed June 28, 1917. L. 1917, p. 654.

To pay cities, etc., every ten days.] Section 244. The county collector shall report and pay over the amount of tax and special assessments, due to towns, districts, cities, villages, corporations and persons, collected by him on delinquent property, at least once in every ten days, when demanded by the proper authorities or persons.

Failure to make report — Suit.] Section 245. Any county collector failing to make the reports and payments hereinbefore required, for five days after the time specified for that purpose, or after demand made as aforesaid, the auditor or such other authorities or persons, may bring suit upon the collector's bond.

Failure to account and pay over — Suit.] Section 246. If any county collector fails to account and pay over as required in the preceding sections, his office may be declared vacant by the county board, or by any court in which suit is brought on his official bond.

Final settlement of the county collector for state taxes — Manner of making settlement.] Section 247. The county clerk shall make out and deliver to the county collector, as soon as adjustment is made with the county board or county clerk, annually, the statements, certificates and lists, appertaining to the settlement of the accounts of such collector, which statements, certificates and lists shall be made out in proper form, under his seal of office, on blanks which it is hereby made the duty of the Auditor to furnish annually for that purpose. The collector shall deliver the same at the office of the Auditor and make a final settlement of his accounts, and pay the amount due the State, into the State treasury, on or before the first day of July next after receiving the tax books: Provided, that in all cases where the statements, certificates and lists appertaining to the final settlement of a collector are on file with the Auditor on or before the first day of July, such collector shall not be liable to any penalty by reason of failing to pay the balance found due on the account of such collector until the expiration of fifteen days after mailing said Auditor's statement showing balance due the State on such collector's account: Provided, further, that this section shall not be held to relieve any collector from the payment of any penalty provided in this Act, by reason of the failure to make payment to the State at other

time or times, as required by this or any other Act of the General Assembly of this State. [As amended by Act approved June 25, 1917. L. 1917, p. 664.]

Duplicate statement to auditor.] Section 248. The county clerk shall furnish a duplicate copy of said statement, duly certified, whenever requested so to do by the auditor.

Correction.] If the statement of credits herein required, or any of the items therein, are objected to by the auditor, he shall return the statement to the county clerk, stating his objections, and said clerk shall examine and correct or explain the same satisfactorily, and return the statement to said auditor.

Overpayment refunded.] Section 249. If any collector shall have paid, or may hereafter pay, into the state treasury, any greater sum or sums of money than are or may be legally and justly due from such collector, after deducting abatements and commissions, the auditor shall issue his warrant for the amount so overpaid, which shall be paid out of the fund or funds so overpaid on said warrant.

How paid into treasury — Duplicate receipt.] Section 250. Upon ascertaining the amount due to the state from any collector or other person, the auditor shall give such person a statement of the amount to be paid, and upon the presentation of such statement to the state treasurer, and the payment of the sum stated to be due, the treasurer shall give duplicate receipts therefor, one of which shall be filed in the auditor's office, and entered in a book to be kept for that purpose, and the other shall be countersigned by the auditor and delivered to the person making the payment; and no payment shall be considered as having been made until the treasurer's receipt shall be countersigned by the auditor as aforesaid.

Neglect of duty by collector—Penalty — Recovery.] Section 251. Any county collector who shall fail to pay into the State treasury, the amount of taxes due and payable from such collector, to the State, at the time or times required by any provision of this Act, shall pay to the State, as a penalty for such failure, a sum of money equal to the interest on such amount at the rate of one-tenth of one per cent per day from the time such amount becomes due and payable until the sum is paid; and the sureties upon the official bond of such collector shall be liable for the payment of such penalty. The penalty in this section provided may be recovered in an action of debt against such collector and

his sureties aforesaid, in the name of the People of the State of Illinois, in any court of competent jurisdiction, and the amount of the penalty, when recovered, shall be paid into the State treasury. Such action shall be brought by the Auditor within ten days after any such amount of taxes becomes due and unpaid, but a failure to bring such suit within such times shall not preclude the bringing of an action thereafter: Provided, that the Auditor may settle with such delinquent collector, upon the payment of the amount of taxes in arrear, together with the penalty aforesaid, but the Auditor shall not remit any part of said penalty: Provided, further, that in all cases where the statements, certificates and lists pertaining to the final statement of a collector are on file with the Auditor as provided in this Act, such collector shall not be liable for any penalty for failure to pay into the State treasury the amount due on such final settlement until the expiration of fifteen days after mailing the Auditor's statement required by this Act.

Provided, however, that this section shall not invalidate or increase the liability upon the bond of any county treasurer in force prior to the passage of this Act, and that to such extent as its application to any such existing bond would result in invalidating such bond or increasing the liability thereon, this section shall be inapplicable thereto. [As amended by Act approved June 25, 1917. L. 1917, p. 664.

Final settlement — Duty of collector — Notice — Hearing. Section 252. Upon the final settlement of any account with the State, the Auditor shall give the collector duplicate certificates, under his seal of office, setting forth that said collector has settled and paid into the State treasury the full amount due from him on said account; and it shall be the duty of the collector to file one of said certificates in the office of the county clerk, on or before the first day of August next after receiving the tax books. If any collector shall neglect or refuse to file one of said certificates as above required, the county clerk shall leave a written notice at the office of said collector requiring him to appear before the County Court at the September term thereof, and show cause why he has not filed the certificate aforesaid. If the county clerk shall not notify the collector as above required, on or before the fifth day of August aforesaid, the State Auditor shall immediately serve such notice upon the county collector, requiring him to appear before said court and show cause as aforesaid. If any collector so notified as aforesaid shall not show that he has paid over the full amount

due from him, and made a final settlement with the State and county, or that he is lawfully excused for failing so to do, his office as collector and treasurer shall be declared vacant by said court, and the same filled as in other cases of vacancy by reason of death or otherwise.

When the notice aforesaid shall have been served as foresaid, at least fifteen days before the first day of the September term of the County Court, said court shall proceed forthwith to hear and determine the matter, but if fifteen days shall not have intervened before the service of such notice as aforesaid, and the first day of the September term of said court, then the matter shall be heard at the next succeeding term thereof. When such notice shall be given by the Auditor, the Attorney General shall appear and represent the interests of the State in all proceedings arising or taken by reason of said notice. [As amended by Act approved June 25, 1917. L. 1917, p. 664.]

Liens of taxes—Of tax on real estate.] Section 253. The taxes upon real property, together with all penalties, interests and costs, that may accrue thereon, shall be a prior and first lien on such real property, superior to all other liens and incumbrances, from and including the first day of May in the year in which the taxes are levied until the same are paid; which lien may be foreclosed in equity in any court of competent jurisdiction in the name of the People of the State of Illinois, whenever the taxes for two or more years, upon the same description of property, shall have been forfeited to the State, and may be sold under the order of the court by the person having authority to receive State and county taxes, with the same notice to interested parties and right of redemption from said sale, as is now provided by law, and in conformity with sections four (4) and five (5) of Article IX of the Constitution of this State. In proceedings to foreclose the tax lien on any real property, the amount due on the collector's books against the said property shall be prima facie evidence of the amount of taxes against the said real property. When any taxes are collected in any such foreclosure proceedings, they shall be paid to the county collector, to be distributed by him to the respective authorities entitled thereto. [As amended by act approved May 30, 1881. In force July 1, 1881. L. 1881, p. 130. Compare Section 53 of 1898, post.]

Lien for taxes accrues on April 1st of each year and is not discharged by subsequent transfer to educational or religious corporation. *People (ex rel.) vs. Ladies of Loretto*, 246—403.

Section 253 requires that a purchaser under decree comply with sec. 216 by giving notice as required therein before he is entitled to a deed, but sec.

217 requiring affidavit of service of notice does not apply to proceedings under sec. 253 and when a court of chancery acquires jurisdiction under that section it may retain jurisdiction until all proceedings necessary to invest purchaser with title has been consummated. *Clark vs. Zaleski*, 253—63; *People vs. Banks*, 272—502.

Tax deeds held by parties of record are cut off by decree foreclosing tax lien; and the proceedings constitute a new and independent title. *Clark vs. Zaleski*, 253—63.

The redemption referred to in sec. 253 means right to redeem within two years from sale, as provided in sec. 210 and sec. 5, art 9 of constitution. *Clark vs. Zaleski*, 253—63.

Each tax is a lien upon railroad property only as to the amount of such property in the taxing district. *People vs. Ry. Co.*, 266—557.

On application for a deed purchaser at foreclosure of tax lien must both allege and prove compliance with sec. 216, and such compliance must be shown by direct and positive statements of the facts and not be left to inference. *People vs. Banks*, 272—502.

Where necessary party to foreclosure proceeding is not made party to original suit, he cannot be precluded as to his interest by a statement in supplemental decree that he had notice of supplemental proceeding. *Glos vs. People*, 259—332, 341.

Foreclosure of tax liens follows same procedure as foreclosure of other liens in equity. *People vs. Cant*, 260—497.

Defendant to proceedings to foreclose a tax lien having an interest in lots has right, before bids are made, to pay full amount of decree against lots but he is not entitled to pay a part only, of amount of decree against any particular lot. *People vs. Cant*, 260—497.

Grantee in quit claim deed of one-third of whatever interest her husband had acquired in lots in the county by virtue of tax deeds, but which did not describe the property against which the lien is being foreclosed was not a necessary party. *People vs. Evans*, 262—235.

The lien for taxes which have been forfeited to the State is paramount to all rights, titles, claims or interests, whenever and however acquired, and everyone claiming an interest is proper party defendant to proceeding to enforce the lien, and his interest is subject to decree foreclosing the lien. *People vs. Evans*, 262—235.

Section 227 of Revenue Act does not conflict with sec. 253. *Zicarelli vs. Stuckart*, 277—26.

Secs. 4 and 5 of Art. 9 of the Constitution and Secs. 253 of the Revenue Act contemplate, not a personal judgment, but a judgment or decree in rem. Where the proceeding is to enforce a decree or judgment in rem, or against the land itself, the officer authorized to sell the property is the treasurer or ex officio county collector, and the time of redemption is a period of two years. But where a judgment is against the owner of land for delinquent taxes, which is a judgment in personam, the right of redemption is that fixed by the statute in case of ordinary sales under judgments, and the officer who has authority to make the sale is the sheriff of the county. *Langlois vs. People*, 212—75.

In a proceeding to foreclose under this section, the amount shown by the collector's books is sufficient evidence of the taxes due. However, where the person objecting had not appeared at the proceedings before the County

Court (Sec. 191), he may here raise objections going to the legality of the taxes forfeited for in rebuttal of the amount on the books. The court may then foreclose as to the amounts legally forfeited for. *Hammond vs. P.*, 169—550.

A decree for defendant, rendered in a suit to foreclose the lien upon land of a delinquent drainage assessment under this section, which finds that complainant "is not entitled to recover the assessment claimed in the bill," is a bar to a subsequent application for judgment against such lands for the assessment in the County Court. *P. vs. Rickert*, 159—496 (1896).

To proceed under this section there must have been a forfeiture of taxes for two or more years. In order to have a forfeiture, a judgment, process authorizing a sale, an offer to sell, and failure to sell on want of bidders, is required. Thus the process for sale provided by Sec. 194 is essential, and the absence of the seal to that is fatal. *P. vs. Henckler*, 137—580 (1891).

Certificate should be requested under seal, and a forfeiture of lands under private scrawl of the clerk will be void. *P. vs. Henckler*, 137—580 (1891).

Where there was a bill to foreclose under Sec. 253, the precept provided by Sec. 194 was not attested under seal of the court and so was void; there was no forfeiture under Sec. 203 and no foreclosure could be decreed. *P. vs. Henckler*, 137—580 (1891).

The State Board of Equalization merely balances the valuations of the different corporations through which the railroad runs; the different taxing bodies levying the taxes. Thus the lien provided by Sec. 253 of a delinquent road tax against railroad track as real estate, is only upon that portion of the railroad upon which levied within that road district and does not extend to other property. *W., St. L. and P. R. Co. vs. P.*, 137—181 (1891).

The amendment in 1881, adding right to enforce this lien by foreclosure, did not create or enlarge it, but gave an additional remedy. *W., St. L. and P. R. Co. vs. P.*, 137—181 (1891).

A bill to foreclose a lien on land for taxes alleged that the lands were forfeited to the State for taxes for the years 1878 and 1879, giving a statement for each year, and then averred that "the full amount now due upon said lands and lots, as shown upon the collector's books of the year 1880, for taxes, penalties, interest and costs, including said forfeitures for the years 1878 and 1879, and accrued taxes for 1880, is the sum of \$3,687.40," and that the amount which was a lien upon each tract is shown by said books, and said copy attached. Held, that such averments were sufficient to admit proof of the amount of taxes due and unpaid for the years 1875, 1876 and 1877, for by making tax collector's books part of the bill, the taxes due for those years were properly set forth. *Mix vs. P.*, 122—641.

In a suit in equity by People to foreclose tax lien on land, a tabulated statement from the town collector's books, prepared by the county clerk, is admissible in evidence; if he had committed any error, a proper cross-examination, which the defendants had the right to make, would have corrected any errors that he may have made; the fact that the statement was prepared under the direction of the solicitor of complainant was a matter of no moment. *Mix vs. P.*, 122—641.

Rule that judgment for taxes for too large amount is void does not apply to case where party objecting was personally before the court which rendered the judgment. It was the duty of the court to allow a credit on each tract of land for whatever had been paid thereon; as for large sums of money paid to the proper officers, under an alleged compromise with the Board of Supervisors. The action of the Board of Supervisors in appointing a committee to reassess the lands for the purpose of taxation, and their compromise regarding the State and county taxes, was clearly unauthorized. *Mix vs. P.*, 116—265.

Joint assessment of tracts: It will be presumed that the tracts lay so that separate assessments were impracticable. If sold as one tract, the land should be treated as one tract in subsequent proceedings. Where the owners appeared and defended against the judgment in the County Court, and failed to raise the point, they cannot raise it now. So, also, with the objection that the tax was one for the payment of bonds which were void and fraudulently issued. *Mix vs. P.*, 116—265.

Amendment of 1881, giving remedy by foreclosure in equity for taxes, created no new lien; and applied to pre-existing rights. The lien includes "penalties, interest and costs." *Biggins vs. P.*, 106—270.

"Penalties, interest and costs," expressly made lien by amendment of 1881, were a lien under Act of 1872. See Sec. 292, *infra*. *Biggins vs. P.*, 106—270.

Taxes levied on real estate become a charge on the land itself and if not paid, land will be sold regardless of incumbrances. *Cooper vs. Corbin*, 105—224.

To create lien for taxes upon real estate it must be described so that it may be located. *Sanford vs. P.*, 102—374. (This was held in application by collector for judgment, which was denied.)

Tax, although assessed after May 1st, if assessed within year, is lien on land from May 1st. *Almy vs. Hunt*, 48—45.

As affecting land, a tax is not an ordinary debt. It takes precedence over all other liens, including those prior in time. Estate of decedent is primarily liable for taxes. State need not wait for administration, and may force payment in exclusion of all other creditors. So of an insolvent estate in hands of assignee. *Dunlap vs. Gallatin County*, 16—7; *People vs. Dummer*, 274—637.

Prior to amendment of 1881, tax lien cannot be enforced in chancery. *P. vs. Biggins*, 96—481; *Clark vs. Zaleski*, 253—76.

That Governor, Auditor and Treasurer levy per cent. that produced sum larger than that authorized to be raised does not render tax void in whole or part, as might fix such per cent. as necessary to produce amount in their judgment necessary. Listing property in name of wrong owner does not vitiate the tax. Revenue Act, Sec. 253, makes tax a lien without reference to ownership, where the railroad company fails to make return lists for assessment, the Board of Equalization may do so upon what information it has, and is not required to go into exhaustive investigation in arriving at the valuation. *Union Trust Co. vs. Weber*, 96—346.

"Taxes," as used in section above, include special assessments. *Hammond vs. P.*, 169—550.

Accounting of taxes equitably due may be taken in proceeding under section above, notwithstanding illegal exactions have been included in judgment of sale. *Hammond vs. P.*, 169—551.

Excess of assessment over estimated cost cannot be raised as defense to proceeding under section above. *Hammond vs. P.*, 169—552.

It is no defense to collection by virtue of section above of unpaid assessment that the improvement for which it was levied has been paid for. *Hammond vs. P.*, 169—553.

Drainage taxes and assessments will support foreclosure under section above. *P. vs. Weber*, 164—415.

Judgment of County Court confirming tax, may not be reduced in proceeding under section above. *P. vs. Weber*, 164—419.

Validity of forfeiture cannot be attacked upon foreclosure. *Hammond vs. P.*, 178—254.

Foreclosure under section above need not make any persons parties defendant other than owner in possession of land, who is liable for tax. *P. vs. Weber*, 164—416.

For maintenance of foreclosure under section above, it is not necessary that separate forfeitures occur in separate years. *P. vs. Weber*, 164—416.

Jurisdiction of court upon foreclosure, under section above, includes power to approve deed after sale, and upon due notice and demand, to put purchaser in possession. *Hammond vs. P.*, 178—504; *Clark vs. Zaleski*, 253—80.

Collateral attack upon deed to bona fide purchaser made in pursuance of foreclosure under section above, is unauthorized for mere errors. *Hammond vs. P.*, 178—504.

Tax on personalty.] Section 254. The taxes assessed upon personal property shall be a lien upon the personal property of the person assessed, from and after the time the tax books are received by the collector.

Upon what property tax is lien:

After collector receives the tax books he can levy upon any personal property found in hands of person against whom tax has been assessed. *Cooper vs. Corbin*, 105—224.

Lien given by above section attaches to all personal property of tax debtor, whether previously assessed or not. *Biunkert vs. Wabash R. Co.*, 98—205.

All the personalty of tax-payer charged with lien for payment of entire tax on personalty. *Hill vs. Figley*, 23—418.

Lien extends to property acquired subsequent to time of assessment. *Loeber vs. Leininger*, 175—487.

The words "personal property," employed in Sec. 254, are to be construed as having the same meaning as "goods and chattels" in Sec. 137 and as comprehending every species of personalty which may under the statute be made the subject of levy and sale under execution issued upon a judgment at law. *Loeber vs. Leininger*, 175—487; *Heinrich vs. Harrigan*, 288—170.

Where tax redemption money is paid to county clerk no lien attaches thereto for unpaid taxes due from the holder of the tax certificates, which are mere choses in action. *Heinrich vs. Harrigan*, 288—170.

When lien begins and ends:

Tax on personal property does not become lien on personal property until tax books are delivered to collector. *Parsons vs. Gas, etc., Co.*, 108—380.

Tax on capital stock of railway corporation is not lien until tax books are received by collector. *Cooper vs. Corbin*, 105—224.

Tax becomes lien on personal property from date warrant comes to collector's hands, not from date of levy of tax. *Gaar vs. Hurd*, 92—315.

If no levy is made before expiration of time within which collector is required to make return, all liens which might have been but were not perfected by levy, are gone. *Ream vs. Stone*, 102—359.

Lien of tax on personal property expires upon return of tax^e warrant. *Saup vs. Morgan*, 108—326.

First lien is not revived by issue of second warrant. *Saup vs. Morgan*, 108—326.

What other liens are prior and subsequent:

Such lien sustained against that of execution issued after books came to collector's hands. *Hill vs. Figley*, 23—418.

Collector's lien on personal property is junior to incumbrance created before he received tax books. *Cooper vs. Corbin*, 105—224.

Such lien is junior to mortgage lien perfected before tax books came to collector's hands. *Binkert vs. Wabash R. Co.*, 98—205.

Lien is not defeated by assignment for benefit of creditors. *Loeber vs. Leininger*, 175—487.

Taxes were assessed against the personal property in suit for the year 1884.

In October, after taxes had been assessed, the owner made a general assignment in favor of creditors. The collector claimed that the taxes had priority over all other claims, though levied later. Held, that the state could not by an insolvent law exempt any property from taxation (Sec. 6, Art. 9, of Constitution.) That, therefore, the property would still be subject to the tax which would become a first lien thereon after the tax books were placed in the hands of the collector (Sec. 254, Revenue Act), and the right to collect this tax continues after the collector's return and final settlement (Sec. 161, Revenue Act.) *Jack vs. Weinenett*, 115—105.

Miscellaneous:

Lien of tax on capital stock of corporation is same as lien of other tax on personal property. *Saup vs. Morgan*, 108—326.

Back taxes cannot be made lien on personalty by simply carrying them out in tax books; warrant authorizing their collection must be attached to tax book. *Ream vs. Stone*, 102—359.

Real and personal tax.] Section 255. Personal property shall be liable for taxes levied on real property, and real property shall be liable for taxes levied on personal property; but the tax on personal property shall not be charged against real property, except in cases of removals, or where said tax cannot be made out of the personal property; but the tax on real property may be made out of personal property at any time after the tax becomes due, by any collector having the tax books in his hands, by distraint and sale, in the manner provided in this act: Provided, that judgment against real property, for non-payment of taxes thereon, shall not be prevented by showing that the owner thereof was possessed of personal property subject to distraint; and no person shall be subject to have his personal property distrained and sold for tax on real estate,

which may have been listed and assessed in his name, when he makes oath, or otherwise satisfies the collector, that he did not own such real property on the preceding first day of May.

Statute must be followed in order to charge personal property tax upon land.

People vs. Schiefley, 252—486, 490.

The collector cannot, as a matter of mere choice or preference on his part, elect to charge the personal taxes against real estate, but where he made an effort in good faith to collect the personal taxes from personalty. *Matzenbaugh vs. People*, 194—108.

Personal property tax cannot be charged against real estate, except in mode provided by statute. An active effort by the collector to make the tax must be shown. This is not shown where the personalty assessed has not been removed from the collector's jurisdiction or disposed of, and no reason appears why it could not be taken to satisfy the tax. *Mt. Carmel Light Co. vs. P.*, 166—202.

Where the collector's book shows unpaid personal property taxes charged against land, it is to be presumed such tax could not be made out of personal property; this presumption prevails unless overcome by proof. The testimony of an assistant collector that no effort had been made by the collector to collect the personal tax did not go for enough to rebut the presumption. Evidence tended to show that the rolling stock, etc., of the delinquent's line at the time belonged to another road, so that it would have been idle ceremony for the collector to have demanded payment of that company. *Cairo, etc., R. Co. vs. Mathews*, 152—153 (1894).

“Where said taxes cannot be made out of the personal property” includes other causes of failure to collect taxes besides insolvency; Secs. 170 and 255 should be construed together. *Shelbyville Water Co. vs. P.*, 140—545 (1892).

Tax on personal property does not become lien on land until collector, on failure to collect tax from personal property, charges same on such land in his application for judgment for delinquent taxes. *Parsons vs. Gas, etc., Co.*, 108—380.

Lien of deed of trust senior to lien of tax does not lose precedence because trust deed contains provision that trustee may pay taxes and reimburse himself from proceeds of sale of property. *Parsons vs. Gas, etc., Co.*, 108—380.

Tax on personal property does not become lien on real property until collector charges tax against particular lots. *Carter vs. Rodewald*, 108—351.

Party replevying personalty levied on cannot afterward object to judgment against land because of failure to exhaust personalty. *Durham vs. P.*, 67—414.

Impossibility of collecting tax from personalty must be shown before lien arises on realty. Secs. 14, 153, of Act of 1853 recited. *Schaeffer vs. P.*, 60—179.

Tax on personal property does not become lien on real property until collector charges tax against particular tract. *Belleville Nail Co. vs. P.*, 98—399.

Lien given above for personal property tax does not touch homestead. *Trustees of Schools vs. Hovey*, 94—394.

Lien on real estate for taxes constitutes a lien on the leasehold interest. *Harris vs. DeWolf*, 136A, 338, 341.

Lien in favor of agent, etc., for tax paid.] Section 256. When property is assessed to any person as agent for another, or in a representative capacity, such person shall have a lien upon such property, or any property of his principal in his possession, until he is indemnified against the payment thereof, or, if he has paid the tax, until he is reimbursed for such payment.

This section has reference to persons acting as agents or in some representative capacity, who at the time fixed by the statute for the assessment of property for taxation had property in their hands, as agents or in some representative capacity which, under Sec. 6 of that chapter it became their duty to list for assessment in their names as agents or in such representative capacity, and who by reason of such listing became liable to pay the taxes under the provisions of Sec. 256. Where the testator of the plaintiff failed to list credits during his lifetime, and the board of review, after his death, caused an assessment to be entered against his executors for such omission, the executors are not to be charged with this failure as a basis of creating an individual liability against them. *Scott vs. People*, 210—594; *People vs. Hibernian Bank Ass'n*, 245—522.

Under Sec. 256 there exists a personal liability on the part of an executor for the payment upon the property of others in the possession of such executor. In an action, as prescribed by Sec. 230, against an executor, it is no defense that the property was overhauled by assessor, as executor should have filed his schedule. An assessment to the estate of a deceased, the name of the executor appearing only in a notation above the entry, is an assessment to the executor. *People vs. Bank Assn.*, 245—522.

This remedy exists and is available notwithstanding the tax could have been collected against the estate by proceeding in the Probate Court. The suit being brought by the People, is not barred by statute of limitations. *People vs. Bank Assn.*, 245—522.

Who not eligible as bondsman — Certain officers.] Section 257. No judge of the county court, chairman of the county board, clerk of the circuit court, county clerk, sheriff, deputy sheriff or coroner shall be permitted to be a surety on the bond of a county, town, district or deputy collector or county treasurer.

Liability on bonds — Specified.] Section 258. The bond of of every county, town or district collector shall be held to be security for the payment by such collector to the State Treasurer, county treasurer, and the several cities, towns and villages and proper authorities and persons, respectively, of all taxes and special assessments which may be collected or received by him on their behalf. and of all penalties which shall be recovered against him, by virtue of any law in force at the time of giving such bond or that may be passed or take effect thereafter. [As amended by act approved June 25, 1917. L. 1917, p. 664.]

Taxpayers may maintain bill in equity against former city treasurer and his sureties to require the return to the city treasury of commissions unlawfully withheld by him upon the amount of taxes collected by him as ex-officio collector taxes. *People vs. Holten*, 287—225.

Suits against collectors — Failure to make settlements — Suit by Auditor — Hearing — Contempt.]Section 259. Upon the failure of any collector to make settlement with the Auditor, or to pay money into the State treasury, it shall be the duty of the Auditor to sue the collector and his sureties upon the bond of such collector, or to sue the collector in such form as may be necessary, and take all such proceedings either upon such bond or otherwise as may be necessary to protect the interests of the State.

Within three days or as soon thereafter as practicable, after failure of any county collector to make settlement with the Auditor, or to pay money into the State treasury as required by any provision of this Act, the Auditor shall commence and prosecute an examination of the official acts, books and accounts of such collector; and it shall be the duty of the said collector to cause his books, accounts and records to be opened for the inspection of such Auditor or such persons as the Auditor may appoint to make or assist in such examination; and for the purpose of such examination such Auditor, or such person as the Auditor may appoint to make such examination, shall have power to examine under oath the said collector, the deputies, clerks or other employees of such collector; and to examine under oath the sureties upon the official bond of such collector, touching the knowledge of such sureties of the taxes collected by such collector and the disposition thereof and the solvency of such sureties.

If any collector shall fail or refuse to open his books, accounts and records for inspection, as aforesaid, upon the demand in writing of the Auditor so to do, the Auditor shall file in the Circuit Court of the county of which said collector is a resident, a petition which shall set forth the aforesaid demand of the Auditor, the failure of such collector to comply therewith, and praying the court to enter an order upon such collector requiring him to appear before such court and show lawful cause for such failure. Said court shall forthwith enter of record an order requiring said collector to appear before such court at a time stated in such order, which time shall not be more than fifteen days after entry thereof and answer said petition, a certified copy of which order shall be delivered at the office of said collector within five days after the entry thereof. If such collector shall not appear as required by said order, the court shall enter an order commanding said collector to produce

such books, accounts and records for the examination aforesaid, within a time not exceeding five days after the entry of such order. If such collector shall appear and answer as required by said order, the court shall forthwith proceed to hear and determine the matter, and if such matter shall not show lawful reason for failure to comply with the Auditor's demand aforesaid, the court shall order said collector to produce such books, accounts and records for such examination within five days after the entry of such order and submit himself to examination under oath by such Auditor or his appointee, touching said books, accounts and records, when required. Such collector failing or refusing to obey such order may be adjudged of contempt of court and punished therefor. [As amended by act approved June 25, 1917. L. 1917, p. 664.]

Jurisdiction — Power of court.] Section 260. When suit is instituted in behalf of the State, it may be in either division of the supreme court, or in the Sangamon county circuit court, or in any court of record in this state having jurisdiction of the amount; and process may be directed to any county in the state. In any proceeding against any officer or person whose duty it is to collect, receive, settle for or pay over any of the revenues of the State, whether the proceeding be by suit on the bond of such officer or person, or otherwise, the court in which such proceeding is pending shall have power, in a summary way, to compel such officer or person to exhibit, on oath, a full and fair statement of all moneys by him collected or received, or which ought to be settled for or paid over, and to disclose all such matters and things as may be necessary to a full understanding of the case; and the court may, upon hearing, give judgment for such sum or sums of money as such officer or person is liable in law or equity to pay. And if, in a suit upon the bond of any such officer or person, he or his sureties, or any of them, shall not for any reason be liable upon the bond, the court may, nevertheless, give judgment against such officer or person, or against such officer and such of his sureties as are liable, for the amount he or they may be liable to pay, without regard to form of the action or pleadings. [As amended by act approved March 24, 1874.]

Proceedings in suit on bond by others.] Section 261. When suit has been instituted by the auditor, any party aggrieved may proceed under the judgment obtained, upon the bond, by writ of inquiry of damages, as in other cases upon bonds. [As amended by act approved March 24, 1874.]

When bond sued by city, town, etc.] Section 262. Cities, towns, villages or corporate authorities, or persons aggrieved, may prosecute suit against any collector or other officer collecting or receiving funds for their use, by suit upon the bond, in the name of the People of the State of Illinois, for their use, in any court of competent jurisdiction, whether the bond has been put in suit at the instance of the auditor or not; and in case of judgment thereon the auditor may, if he shall so elect, have a writ of inquiry of damages for any amount that may be due to the state treasury from such officer. Cities, towns, villages and other corporate authorities or persons, shall have the same rights in any suits or proceedings in their behalf as is provided in case of suits by or in behalf of the State. [As amended by act approved March 24, 1874.]

Tax-payers suing on the official bond of a tax collector in the name of the People for the use of a city are not "aggrieved persons." *People vs. Holten*, 259—219, 222.

Fees when State sues.] Section 263. The State shall pay like fees as are or may be allowed by law in suits between individuals; and in all cases when the State is plaintiff, it shall advance and pay such fees in like manner as individuals are required to advance and pay fees; and when the State becomes the purchaser of real property sold on execution, for any debt due the State, the officer selling such real estate shall be entitled to like commissions as he would have been entitled to had such property been purchased by an individual — said fees and commissions to be paid on the warrant of the auditor, out of any money in the treasury appropriated for that purpose; and when such fees are collected they shall be paid into the state treasury.

Sale of real estate on execution in behalf of the State — Redemption — Notice of levy given auditor — He to purchase in — Redemption.] Section 264. When real estate shall be levied upon to satisfy any judgment in favor of the State, it shall be the duty of the officer making such levy, to transmit by mail, to the auditor, at least twenty days before the day of sale, a correct statement, showing the description and value of said property, in cash; the truth of said statement shall be attested by the oath of said officer. Said officer shall, at the same time, furnish the auditor with an abstract of title of the property levied upon, the expense thereof to be charged and collected as costs. And the auditor is hereby authorized and required to purchase, in his name, for the use of the People of the State of Illinois, at a price not exceeding two-thirds of said value, so much of said property as may be required to pay the amount of the judgments and costs aforesaid; and it shall be

the duty of the officer making such sale to forward to the auditor a certificate of purchase, and make his return, as required in other cases of sales on execution. Any person desiring to redeem all or part of said property from such sale, shall pay the amount of redemption money into the state treasury, and thereupon the auditor shall indorse such payment on the back of the certificate of purchase aforesaid, and deliver it to the person so paying, which shall have the same effect as redemptions have in other cases; but no real estate purchased as aforesaid shall be considered redeemed from such sale until the redemption money is paid into the state treasury. Such certificate may be recorded in the recorder's office of the county in which such real property is situated, and shall operate as a release of record of such property.

Payment of money collected.] Section 265. All moneys received by any sheriff or other officer, on execution, in behalf of the State, shall be paid by such officer to the state treasurer or to the collector of his county, as may be directed by the auditor, within twenty days after demand is made by said auditor. Said demand may be made by any person authorized by the auditor.

When real property not redeemed—Timber, etc.] Section 266. If any real estate, purchased by the State on execution, shall not be redeemed within the time required by law, it shall be the duty of the auditor to obtain a deed or deeds therefor, which he shall cause to be recorded in a book kept for that purpose in his office; and shall take such steps as he shall deem necessary to protect the timber or fixtures thereon from being lost or destroyed.

Double payment and assessment — Refunding — Payment by different claimants—Return, etc.] Section 267. Whenever the taxes on the same property shall have been paid more than once, for the same year, by different claimants, the county collector shall make a return to the county clerk of all such surplus taxes so received by him, together with the names of the several claimants thus paying. Certified copies of said return, or of record thereof, by the county clerk, or of the county clerk's report, by the auditor, shall be prima facie evidence in all courts, when the same shall come in question, of the payment of tax on the property therein described for the year or years therein mentioned. The county clerk shall make a full record of all such cases, and transmit a certified copy thereof to the auditor, who shall charge such collector with the portion of such surplus taxes belonging to the State. The town or district collectors shall report such cases to the county collector, and he to the county clerk.

Double assessment or payment — Refunding.] Section 268. If any real property shall be twice assessed for the same year, or assessed before it becomes taxable, and the taxes so erroneously assessed shall have been paid, either at sale or otherwise, or have been twice paid by different claimants, the county board, on application of the person paying the same, or his agent, and being satisfied of the facts in the case, shall cause the State and county taxes to be refunded pro rata by the State and county; and the city and incorporated town or village taxes and special assessments, by the city or incorporated town, village or other proper authorities or persons. If any county, town or district collector shall receive the taxes or special assessments properly due on any real property, and the same shall afterwards be sold for said taxes or special assessments, he shall refund to the purchaser thereof, if application be made within three years from the date of said sale, double the amount of purchase money and all expenses of advertising said real estate under this act, requiring real estate purchased at tax sales to be advertised, including costs of deeds. Any collector neglecting or refusing to pay as required by this section, shall be liable to the county, or person in interest, in an action of debt in any court having jurisdiction.

Purchaser of lands not subject to taxation, e. g., Illinois Central lands, is entitled to refunding hereunder, as where contract of sale, forfeited and canceled, so title not out of Illinois Central. *Champaign County vs. Reed*, 106—389.

In application for refund on ground property exempt, on issue whether Illinois Central Railroad Company had sold lands or not, board may refuse to save tax refunded in doubtful case. *Champaign County vs. Reed*, 100—304.

This section provides for remedy where double taxation, but where no taxes paid, no refund can be made, and law does not require payment of taxes before owner may object to double taxation, in order to bring him within this section. *P. vs. Ohio R. Co.*, 96—441.

Sec. 213 as amended in 1895 repeals by implication provision of this section providing for refund of an additional 100 per cent. *Heydecker vs. Price*, 136A. 512, 514.

When records are destroyed — New assessment.] Section 269. When assessment rolls or collectors' books, in whole or in part, of any county, town, city, incorporated village or district, shall be lost or destroyed by any means whatever, a new assessment, or new books as the case may require, shall be made under the direction of the county board. Said board shall, in such cases, fix reasonable times and dates for performing the work of assessment, equalization, levy, extension and collection of taxes, and paying over the same, or making new books, as the circumstances of the case may require. All the provisions of this act shall apply to the dates fixed by the

county board, in the same manner that they apply to the dates for similar purposes, as fixed by this act. The county board is hereby fully empowered to select and appoint persons, where it may find the same necessary, to carry into effect the provisions of this section.

Other duties of auditor—When a locality does not pay its share of tax.] Section 270. Whenever it shall come to the knowledge of the auditor that any county, township, city, district or town, or any well defined locality thereof, or any particular class of property therein, has heretofore been or may hereafter be released, from any cause whatever, from its just proportion of State taxes, said auditor shall cause suit to be commenced in an action of debt, in the name of the People of the State of Illinois, either against the municipality or against the property unjustly released from taxation, or the owners thereof, for the amount of such tax, in the supreme court of this State, in either division thereof; and when judgment may be recovered in any such case, the auditor shall levy a rate of tax on the equalized valuation of all property or particular class of property in such county, township, city, district, town or locality, as the case may be, as will pay the State the amount of such judgment and costs; and it shall be the duty of the county clerk of the proper county to extend such rate of tax with the State tax of the year directed in the auditor's certificate. Any county clerk neglecting or refusing to extend such rate, as certified to him by the auditor, shall be removed from his office, and in addition thereto shall be subject to a fine of \$5,000, and damages caused by such neglect or refusal, to be sued for by the auditor, in an action of debt, in the name of the People of the State of Illinois, in either division of the supreme court of this state: Provided, that in cases where the auditor and proper local authorities of the proper municipality can arrange to make such levy to reimburse the State in such cases, without suit, the auditor is hereby authorized to pursue such course.

Auditor may sell property bought in by State.] Section 271. The auditor is authorized to sell, transfer and convey, by deed, any and all real estate that may have been heretofore, or may be hereafter, purchased or taken in payment, to satisfy any judgment or any execution in favor of the State, by this State or by any officer of this State, for the benefit and use of the State, to any person or persons who may pay into the state treasury the full amount paid by the State for said property, including costs and six per cent interest thereon, from the date of said sale to the time of such payment: Provided, that the sale of the real estate, in part or in whole, may be made at such price, not less than the price paid for such

part or whole of the property, as the case may be, as the judge of the county court, chairman of the county board, and the sheriff of the county in which the estate is situated, shall certify the same to be worth; or, if not sold in one year from and after the expiration of the time of redemption now or hereafter allowed by law, said property may, if the auditor thinks the valuation fair, be sold by said auditor upon and for any valuation of said property which may be appraised and certified by the judge of the county court, chairman of the county board and sheriff of the county in which such property is situated.

Abstracts. United States, canal and Illinois Central Railroad lands.] Section 272. On the first day of May in each year, or as soon thereafter as practicable, the auditor shall obtain from the United States land office in this State abstracts of the lands entered and located, and not previously obtained, and shall, at the same time, obtain from the Illinois Central railroad, and canal offices, abstracts of the Central railroad and canal lands sold. Upon the receipt of said abstracts, the auditor shall cause them to be transcribed into the tract books in his office, and shall, without delay, cause abstracts of the lands in each county, including school lands reported to his office as having been sold, to be made out and forwarded by mail to the county clerks of the several counties; and said clerks shall cause such abstracts to be transcribed into the tract book, and filed in their office. The expense of procuring and furnishing the abstracts required by this section, shall be paid by the auditor out of the appropriation for the expenses of his office.

Forms — Instructions — Opinion.] Section 273. It shall be the duty of the auditor (Tax Commission) to make out and forward to each county clerk, from time to time, for the use of such clerks and other officers, suitable forms and instructions; and all such instructions shall be strictly complied with by the officers in the performance of their respective duties. He shall give his opinion and advice on all questions of doubt as to the true intent and meaning of the provisions of this act.

Powers and duties conferred on Auditor of Public Accounts to be exercised by Tax Commission. See Note Sec. 50 *supra*.

Act published.] Section 274. The auditor (Tax Commission) shall, as soon as practicable after the passage of this act, cause the same to be correctly printed in pamphlet form, and transmit to each county clerk a sufficient number of copies for the use of the several county, town and district officers; and said clerk shall deliver the same to the proper officers.

Powers and duties conferred on Auditor of Public Accounts to be exercised by Tax Commission. See Note Sec. 50 supra.

Swamp lands.] Section 275. The county clerks of the several counties shall, annually, report to the auditor a list of the swamp and overflowed lands sold in their respective counties for the year ending on the first day of May, and the auditor shall enter the same in the tract books of his office.

Omitted property — Saving clauses — When discovered, listed and tax added — Personal tax.] Section 276^a. If any real or personal property shall be omitted in the assessment of any year or number of years, or the tax thereon, for which such property was liable, from any cause has not been paid, or if any such property, by reason of defective description or assessment thereof, shall fail to pay taxes for any year or years, in either case the same, when discovered, shall be listed and assessed by the assessor and placed on the assessment and tax books.¹ The arrearages of tax which might have been assessed, with ten per cent. interest thereon,² from the time the same ought to have been paid, shall be charged against such property by the county clerk.³ It shall be the duty of county clerks to add uncollected personal property tax to the tax of any subsequent year, whenever they may find the person owing such uncollected tax assessed for any subsequent year.

A. In General:

Section 276 is not in violation of due process of law provision of constitution, as provision for notice in Sec. 278 applies. *People (ex rel.) vs. National Box Co.*, 248—141.

Since Revenue Act of 1898 came into effect the assessment of omitted property for previous years required to be listed under this section is to be made by board of review and the board must give notice of such assessment that it was duty of assessor to give. *People (ex rel.) vs. National Box Co.*, 248—141.

1. Who shall assess and what:

The modification (Sec. 329) of Sec. 276 which took the power to assess omitted property from the local assessor and put it in the Board of Review does not apply to the Board of Equalization, but that board may still assess omitted property as before. This section does not apply where property was duly listed by the owner and assessed, and the only fault was that of the county clerk in failing to extend the tax. Such a case comes within Secs. 277, 278. *Hayward vs. P.*, 156—84 (1895).

This section does not authorize the assessment of subsequently discovered credits; it applies only to cases in which owner omits to list whole number of articles of personal property. *Allwood vs. Cowen*, 111—481.

This and the next section relate to "back taxes" as distinguished from "forfeited taxes." *Neff vs. Smyth*, 111—100.

2. Interest.

It was objected to a judgment for back taxes, that the tax judgment record did not show the years for which the taxes were due. Held, that this proceeding being for forfeited taxes under Secs. 129 and 229, did not require such, but such was required only under Secs. 276 and 277, where interest is to be computed only on the back tax itself, so that the taxes must there be brought forward in separate columns, designating the years, as provided by Sec. 277. *Neff vs. Smyth*, 111—100.

Section 276 authorizing judgment for interest or penalties, does not apply where land has been listed and taxes paid but judgment is sought for city taxes alleged to have been omitted and claimed to be due because of invalidity of proceedings disconnecting land from city. *People vs. Ellis*, 253—369.

3. When assessed:

It is proper for the Board for Equalization, in making a back assessment for omitted property, to add 10 per cent. interest charge. *People vs. C. & A. Ry. Co.*, 228—102.

Tax not collected added to subsequent year.] Section 277. If the tax or assessment on property liable to taxation is prevented from being collected for any year or years, by reason of any erroneous proceeding or other cause, the amount of such tax or assessment which such property should have paid may be added to the tax on such property for any subsequent year, in separate columns designating the year or years. [As amended by act approved May 3, 1873.]

Where a school district was changed so that the tax-payer's property fell into another district, but he was nevertheless still assessed in the old district and paid the taxes, and the taxes of the new district were all levied against other property and paid, the second district may not recover as back taxes, for levies that it, instead of the first district, might and should have made against that property. *R. R. Co. vs.* 196—606.

Collector's return should specify years for which back taxes are delinquent, *Mann vs. P.*, 102—346; as where there has been no forfeiture, but in which back tax simply is added to tax of year later. *Belleville Nail Co. vs. P.*, 98—399.

This section does not impair rights of person owing back tax, but only provides another mode of collecting tax which he owes. *Hosmer vs. P.*, 96—58.

If statute provides that back delinquent tax shall bear interest, but does not specify rate, only interest at rate of 6 per cent. can be collected. *Swinney vs. Beard*, 71—27.

Interest on back taxes included in levy, computed by county clerk at 10 per cent. instead of a 6 (statute authorizing interest thereon being silent as to rate), not such an excessive levy as to be ground for an injunction against collection of whole tax; must show tender of legal amount. *Swinney vs. Beard*, 71—27.

Not prior to date of ownership—Notice.] Section 278. No. such charge for tax and interest for previous years, as provided for in the preceding section, shall be made against any property prior to the date of ownership of the person owning such property at the

time the liability for such omitted tax was first ascertained: Provided, that the owner of property, if known, assessed under this and the preceding section, shall be notified by the assessor or clerk, as the case may require.

Notice to owner of assessment of omitted property must be given by board of review. *People vs. National Box Co.*, 248—141.

Provision for notice contained in proviso applies to Sec. 276 which directs that omitted property be listed and assessed. *People (ex rel.) vs. National Box Co.*, 248—141.

This section and the next confer on highway commissioners no power to levy a road tax on property in one year of an amount sufficient to pay the taxes for several preceding years during which the property in question was untaxed. *Ohio and M. R. Co. vs. P.*, 123—648.

Receiver in possession is not owner under this section. *Union Trust Co. vs. Weber*, 96—346.

Applies to park assessments. *P. vs. Springer*, 106—542.

Special assessment — Return limited.] Section 279. When any special assessment is not returned to the county collector on or before the first day of March next after it is due, the same may be returned on or before the first day of March in the succeeding year; and, if not then returned, it shall be considered barred, unless return is prevented by an injunction or order of court; and the time such return is thus prevented shall be excluded from the computation of such time.

Where the park commissioners followed Secs. 61 to 67 of Local Improvement Act of 1897 in making special assessments, Sec. 279 of Revenue Act does not apply. *Cummings vs. People*, 213—443.

Failure to complete assesment in time not to vitiate.] Section 280. A failure to complete an assessment in the time required by this act shall not vitiate such assessment, but the same shall be as legal and valid as if completed in the time required by law.

Under Secs., 191 and 280 of Revenue Act, failure of assessor to return the assessment on the day fixed by Sec. 90, does not vitiate the assessment. *St. Louis Bridge Co. vs. P.*, 128—422.

A failure to return assessments within the time required by law does not vitiate the assessment. *Wright vs. P.*, 87—582.

Act of 1853 amending general revenue law and providing that failure to return the assessment in time shall not vitiate, does not apply to assessments for corporate purposes. *Sanderson vs. La Salle*, 57—441.

It was claimed that the tax was void because return was not made by the taxpayer, he having made none because not furnished with proper forms and blanks. Held, that even if this were essential, statute cures defects when tax is lawful, and property subject to taxation. *Pacific Hotel Co. vs. Lieb*, 83—602.

The provision curing assessor's failure to make his return on the day appointed is not unconstitutional as depriving of "life, liberty or property." The Constitution nowhere provides for a return on a day certain. *Eurigh vs. P.*, 79—214.

Informality not to vitiate.] Section 281. No assessment of real or personal property, or charge for taxes thereon, shall be considered illegal on account of any informality in making the assessment, or in the tax lists, or on account of the assessments not being made or completed within the time required by law.

The question was whether the county clerk in any succeeding year could go back and extend a school tax on the valuation for the previous years, and bring it forward and attach it to the taxes of the current year as back taxes due on the property. Held not, as the certificates which the school directors are empowered to make by Sec. 44 of the school law (Rev. Stat. 1874) is the basis of all school taxes, and Sec. 281 does not apply. *Weber vs. Ohio, etc., R. Co.*, 108—451.

Failure to deliver tax books not to vitiate.] Section 282. Any failure to deliver the collector's books within the time required by this act, shall in no way affect the validity of the assessment and levy of taxes, but in all cases of such failure, the assessment and levy of taxes shall be held to be as valid and binding as if said books had been delivered at or within the time required by law.

Wrong name not to vitiate.] Section 283. No sale of real estate for taxes shall be considered invalid on account of the same having been charged in any other name than that of the rightful owner.

Who may administer oaths.] Section 284. Any oath, authorized to be administered under this act, may be administered by an assessor or deputy assessor, or by any other officer having authority to administer oaths.

Penalties of officers — Delivering books before collector's bond filed.] Section 285. If any county clerk shall deliver the tax books into the hands of the county collector, or if any collector shall receive said books or collect any taxes until such collector's bond has been approved and filed, as required by this act, said clerk and collector, and each of them, shall be liable to a penalty of not less than \$500, and all damages and costs, to be recovered in an action of debt; and the auditor shall bring suit therefor, in the name of the People of the State of Illinois — the amount recovered on such fines to be paid into the state treasury as revenue fund. Nothing in this section shall be construed as relieving the securities of a collector from liabilities incurred under a bond not approved and filed by the auditor.

Collector — Neglect to obtain judgment, etc.] Section 286. If any collector shall, by his own neglect, fail to obtain judgment at the May term of the County Court, or shall fail to present his list of delinquencies on personal property, or errors in assessment of real estate, at the time required by this act, he shall lose the benefits of any abatement to which he might have been entitled, and shall pay to the State and county the full amount charged against him, after deducting the fees allowed by this act for collecting and paying over taxes. If the County Court is not held at the May term, the collector shall have further time to pay over the amount due on the delinquent list.

Failure to do any duty under this act.] Section 287. If any officer shall fail or neglect to perform any of the duties required of him by this act, upon being required so to do by any person interested in the matter, and for the failure or neglect to perform such duty there is no other specific penalty provided in this Act, he shall be liable to a fine of not less than ten dollars (\$10.00) nor more than five hundred dollars (\$500.00), to be recovered in an action of debt in the Circuit Court of the proper county, and may be removed from office at the discretion of the court; and any officer who shall knowingly violate any of the provisions of this act, for the violation of which there is no other specific penalty provided for herein, shall be liable to a fine of not less than ten dollars (\$10.00) nor more than one thousand dollars (\$1,000.00) to be recovered in an action of debt in the name of the People of the State of Illinois, in any court having jurisdiction and may be removed from office at the discretion of the court, and said fines when recovered shall be paid into the county treasury. [As amended by act approved June 25, 1917. L. 1917, p. 664.]

The trial court refused to compel the assessor, when on the witness stand, to testify at what ratio to its fair cash value he had assessed all other property in his town, on the ground that it might incriminate him as under Sec. 287 of Revenue Act. *Keokuk Bridge Co. vs. P.*, 176—268.

Refusal by clerk, assessor or other officer to do duty.] Section 288. Every county clerk, assessor, collector or other officer who shall in any case refuse or knowingly neglect to perform any duty enjoined upon him by this act, or who shall consent to or connive at any evasion of its provisions, whereby any proceeding required by this act shall be prevented or hindered, or whereby any property required to be listed for taxation shall be unlawfully exempted, or the same be entered upon the tax list at less than its fair cash value, shall, for every such offense, neglect or refusal, be liable, on the complaint of any person, for double the amount of the loss or

damage caused thereby, to be recovered in action of debt, in the name of the People of the State of Illinois, in any court having jurisdiction, and may be removed from his office at the discretion of the court.

County to furnish books and blanks — clerks to procure them.]

Section 289. The county board shall direct the county clerk to procure all necessary books and blanks required by this act to be used in the assessment of property and collection of taxes, at the expense of the county.

County funds — Manner of keeping accounts thereof — By collector, etc.] Section 290. The county collector shall, on the first of every month, report to the county clerk, in writing, the amount of county tax received by him during the preceding month, showing what amount of said tax was received in money, and what amount in county orders and jury certificates. The county collector shall keep his account as collector of taxes separate from his account as county treasurer. He shall credit his account as collector with the amount of his monthly reports to the county clerk, and with the amount of insolvencies, removals, errors, forfeitures, and other credits allowed him on settlement with the county board; and as county treasurer he shall charge himself with the amount shown in his monthly report to the county clerk, as aforesaid, and such other amounts as may come into his hands as county treasurer; and he shall, as such treasurer, at the close of each month, cancel the county orders and jury certificates in his hands, and return the same with a descriptive list, giving numbers and amounts properly footed, to the county clerk, who shall carefully compare and file the same in his office, subject to the order of the county board, and give the treasurer a receipt for the same; which receipt shall be evidence upon which the county treasurer shall take credit in his accounts as such treasurer, with the county, subject to the approval of the county board. The county board shall examine such accounts and vouchers, at such time or times, by committee or otherwise, as may be deemed requisite.

Sureties on treasurer's bond, as collector, are liable for his default until he reports receipt of fund to county clerk, as required by above section; after such report, sureties on his bond, as treasurer, are liable. *P. vs. Hoover*, 92—575.

“It is insisted that the money reported was received by him as collector and not as treasurer, and he and his sureties are liable on his collector's bond . . .” The complete answer to this is that when county collector makes report, all he reports as having received as collector is transferred to his account as treasurer, and he is credited with the amount as collector. *Hawley vs. P.*, 95—249.

By clerk, etc.] Section 291. Each county clerk shall keep an account with the county collector, charging him with the amount of county tax placed in his hands for collection, and with the county tax received by him from sales and redemptions of forfeited property, and with any other funds, belonging to the county, that shall come into the collector's hands; and shall credit him with the amounts ascertained as required in the preceding section, charged to the county treasurer's account monthly; also, with amount of county tax on insolvencies, removals, errors, forfeited property, etc., whenever ascertained in the manner required by this act. The county clerks shall also keep a treasurer's account with the county treasurer of their respective counties. The treasurer shall be charged with the amount of money, county orders and jury certificates reported in the collector's monthly statements required to be made in the preceding section, and all amounts paid to the county treasurer from other sources than the county revenue tax; and it is hereby made the duty of all persons paying money into the county treasury, for all purposes except the county taxes, to first obtain from the county clerk an order on the treasurer to receive the same; and the treasurer shall give the person so paying duplicate receipts therefor, one of which shall be countersigned by the county clerk, and retained by the person paying over the amount, and the other filed in the county clerk's office, and the amount thereof charged against the treasurer. The treasurer's account shall be credited, monthly, with the amount of county orders and jury certificates canceled and filed in the county clerk's office, as required in the preceding section.

Definitions.] Section 292. The words and phrases following, whenever used in this act, shall be construed to include in their meaning the definitions set opposite the same in this section, whenever it shall be necessary to the proper construction of this act.

1st. **ASSESSOR — ASSESSORS.** — Town, district and deputy assessors.

2d. **AUDITOR** — Auditor of Public Accounts.

3d. **BANK — BANKER — BROKER — STOCK JOBBER.** — Whoever has money employed in the business of dealing in coin, notes or bills of exchange, or in the business of dealing in or buying or selling any kind of bills of exchange, checks, drafts, bank notes, promissory notes, bonds, or other writing obligatory, or stocks of any kind or description whatsoever, or receiving money on deposit.

4th. **COLLECTOR—COLLECTORS.**—County, town, district and deputy collectors.

5th. **COUNTY BOARD.**—The board of supervisors—the board of county commissioners.

6th. **CREDITS.**—Every claim or demand for money, labor[,] interest, or other valuable thing, due or to become due, not including money on deposit.

7th. **HE.**—Male, female, company, corporation, firm, society, singular or plural member.

8th. **MONEY — MONEYS.**—Gold silver or other coin, paper or other currency used in barter and trade as money, in actual possession, and every deposit which the person owning, holding in trust, or having the beneficial interest therein, is entitled to withdraw in money on demand.

9th. **NUMBER.**—The singular number shall include the plural and the plural number shall include the singular.

10th. **OATH.**—Oaths or affirmation.

11th. **PERSON — PERSONS.**—Male, female, corporation, company, firm, society, singular or plural number.

12th. **REAL PROPERTY — REAL ESTATE — LAND — TRACT — LOT.**—Not only the land itself, whether laid out in town or city lots, or otherwise, with all things contained therein, but also all buildings, structures and improvements, and other permanent fixtures, of whatsoever kind, thereon, and all rights and privileges belonging or in anywise pertaining thereto, except where the same may be otherwise denominated by this Act.

13th. **SHARES OF STOCK — SHARES OF CAPITAL STOCK.**—The shares into which the capital or stock of every incorporated company or association may be divided.

14th. **TAX — TAXES.**—Any tax, special assessments or costs, interest or penalty imposed upon property.

15th. **YEAR.**—The word “year,” when used in this Act, with reference to taxes of or for a year, shall mean a calendar year, beginning on the first day of January.

[As amended by act approved June 27, 1917. L. 1917, p. 657.]

Clause 12:

Tunnels under the streets of Chicago privately owned are real estate (Sec. 292 of Revenue Act). Therefore, it was proper for the local assessor to assess them, and such was not barred by tax of capital stock by State Board of Equalization. *People vs. Upham*, 221—555.

Power transmission lines of a sanitary district, whether consisting of wooden poles or steel towers on concrete bases and spoil banks composed of excavated materials from channel, all on land owned by district is real estate. *Sanitary Dist. vs. Young*, 285—423.

Power of county court, until, etc.] Section 293. In all counties not under township organization, the county court, or judge of the

county court, as the case may require, shall perform all the duties required in this act to be performed by the county board, or chairman of the county board, as the case may be, in such counties, until such time as the board of county commissioners shall be duly elected and qualified in said counties.

Repealing clause] Section 294. The laws and parts of laws entitled as hereinafter named are hereby repealed.

[The acts repealed are omitted. They will be found set out in Laws 1871-2, pp. 69-71. They are again enumerated in R. S. 1874, Ch. 131, Section 5.]

The repeal of said acts and parts of acts shall not be construed to impair any right existing, or affect any proceeding pending, at the time this act shall take effect; but all proceedings for the assessment of any tax, or collection of any tax or special assessment then remaining incomplete, may be completed pursuant to the provisions of this act. The provisions of this act shall apply to redemptions from sales made for taxes or special assessments previous to the taking effect hereof, and the mode of giving notice, and issuing deeds upon certificates of sales made for taxes.

STATE TAX COMMISSION.

AN ACT in relation to the assessment of property for taxation. (Approved June 19, 1919. In force July 1, 1919. L. 1919, p. 718.)

The State Tax Commission was created by an act to amend Secs. 5, 9 and 13 of the Civil Administrative Code and by adding a new section to be known as section 39a. (L. 1919, p. 9; R. S. Ch. 24½.)

Section 5 provided for the appointment of the Tax Commission, which shall consist of three officers, Sec. 9 each Commissioner shall receive six thousand dollars, Sec. 13 for a term of six years: the first commissioner appointed for a term of six years, one for a term of four years and one for a term of two years.

Section 39a is as follows: "The State Tax Commission created by this Act shall, in its name, without any direction, supervision or control by the Director of Finance, exercise and discharge all duties now or hereafter imposed by law on it with reference to the assessment of property for taxation. All clerical and administrative functions pertaining to the business of the Tax Commission shall be discharged by the Director of Finance who shall for that purpose, act as its secretary and executive officer.

General Powers and Duties of Commission — Local Assessment Officers] Section 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly:

The term "local assessment officers," as used in this Act, shall mean and include township assessors, boards of assessors, the county treasurer and boards of review.

Powers and duties of commission.] Section 2. The Tax Commission shall:

(1) Direct and supervise as provided by this Act, the assessment for taxation of all real and personal property in this State to the end that all assessments of property be made relatively just and equal;

(2) Confer with, advise and assist local assessment officers relative to the assessment of property for taxation;

(3) Prescribe general rules and regulations, not inconsistent with law, for local assessment officers relative to the assessment of property for taxation, which general rules and regulations shall be binding upon all local assessment officers and shall be obeyed by them respectively until reversed, annulled or modified by a court of competent jurisdiction;

(4) Prescribe or approve the form of blanks for schedules, returns, reports, complaints, notices and other documents, files and records authorized or required by and provision of law relating to the assessment of property, or by any rule and regulation of the commission and all assessing officers shall use true copies of such blank forms;

(5) Assess the railroad property denominated "railroad track" and "rolling stock";

(6) Assess, and value, in the manner provided by law, the capital stock, including the franchise, of all companies or associations now or hereafter incorporated under the laws of this State, except companies and associations organized for purely manufacturing and mercantile purposes, or for either of such purposes, or for the mining and sale of coal or for printing or for the publishing of newspapers or for the improving and breeding of stock, or for the purpose of banking, including any of such property as may have been omitted from assessment in any year or years, or which, from defective description has not paid any taxes for any year or years;

(7) Equalize the valuation and assessment of property throughout the State between the different counties of the State and fix the aggregate amount of the assessment for each county upon which taxes shall be extended;

(8) Keep a correct record of its acts and doings relative to the assessment of property and the equalization of assessments.

In General:

State Board of Equalization in assessing property, may act on its own knowledge without evidence as to value, and it has power to increase valuation

returned by officers of a corporation without hearing evidence to impeach the return. *People vs. Chicago, L. S. & E. R. Co.*, 286—576; *R. Co. vs. Surrell*, 88—535.

Revenue act governs State Board of Equalization, so far as applicable. *State Board of Equalization vs. P.*, 191—541.

Clause 5:

See *Supra*, Secs. 42, 44, 50 of General Revenue Act and cases cited thereunder. The following cases dealt with the power of the State Board of Equalization under a similar statute:

Assessment void when it should have been made by State Board of Equalization and was not, but was assessed by the local assessor. *Chicago, etc., R. Co. vs. P.*, 98—350.

State Board of Equalization may increase valuation as made in the return by company's officers without first hearing evidence impeaching it. Where the railroad company fails to return lists for assessment, the Board of Equalization may return valuation upon what information it has, and is not required to go into exhaustive investigation in arriving at the valuation. *St. Louis, etc., R. Co. vs. Surrell*, 88—535.

Division of aggregate value of railway track among the several counties and municipalities in proportion to length situated therein, is uniform because whole railroad is to be considered as a unit, and each part worth its proportionate share. Sec. 109 does not violate Sec. 10 of Art. 9 of constitution as taxing corporate property, as railroad is a unit. *Law vs. P.*, 87—385.

In proportioning the tax among the villages through which a railroad runs, the clerk is not governed by the schedule furnished by the company to ascertain which those villages are. He may obtain such information from other sources. *Indiana, etc., R. Co. vs. P.*, 154—558 (1894).

Held, arguendo, that word "districts," as used in this section, does not refer to road districts, but to school districts. *O. and M. Co. vs. P.*, 119—207.

Under former law valuation and assessment of railway was not of an undivided part of the whole, but was of specific part situated within each county. *Sangamon, etc., R. Co. vs. Morgan County*, 14—163.

A county's jurisdiction to tax railroad track is confined to within its own limits. *Sangamon and Morgan R. Co. vs. Morgan County*, 14—163.

Where valuation is so grossly out of the way as to show that the assessing body could not have been honest in its valuation and must have reasonably known that it was excessive, such fact is accepted as evidence of fraud on its part against the tax-payer. *People vs. Chicago, L. S. & E. R. Co.*, 286—576, 579.

A valuation of railroad property arbitrarily made by the State Board in disregard of its own rules as to valuation cannot be sustained. *People vs. Chicago, L. S. & E. R. Co.*, 286—576.

Clause 6:

(See Sec. 3, clause 4 of General Revenue Act, *supra*.)

The following cases dealt with the power of the State Board of Equalization under a similar statute:

It is proper for the legislature to assess the capital stock of a corporation, including the franchise, as it has the power to determine the manner in which taxes may be levied. *Coal Co. vs. Miller*, 236—149.

State Board of Equalization acts as original assessor in assessing capital stock and franchise. *State Board of Equalization vs. P.*, 191—533.

The assessment of capital stock and franchises of corporations should be based upon fair cash value. Assessment which is fraudulently made is impeachable. *State Board of Equalization vs. P.*, 191—538.

Where the corporation's debts have absorbed all its property, taxation of capital stock is properly based upon value of its debt, other than current expenses. *Keokuk Bridge Co. vs. P.*, 161—143.

It is proper and not double taxation to assess and tax the capital stock of corporation, and also its tangible property. *Danville B. & T. Co. vs. Parks*, 88—170; *Danville Mfg. Co. vs. Parks*, 88—463; *Pacific Hotel vs. Lieb*, 83—602; *Porter vs. Rockford, R. I. and St. L. R. Co.*, 76—561; *Republic Life Ins. Co. vs. Pollak*, 75—292; *Hopkins vs. Taylor*, 87—436.

On application for judgment for unpaid tax the decision of State Board of Equalization can be assailed only for fraud or want of jurisdiction, as it is quasi-judicial in its nature. *Connecting R. Co. vs. P.*, 119—182.

Assessment of capital stock by State Board of Equalization upheld, as by that was meant not "shares," but property of corporation. *Porter vs. Rockford, etc., R. Co.*, 76—561.

It is easily conceivable how the capital stock of some companies might not exceed the value of their tangible property, and hence it was not reviewable error for the State Board of Equalization to assess one corporation at a greater value than its tangible property and other companies' stock at the value of tangible property only. *C., B. and Q. R. Co. vs. Siders*, 88—320.

An assessment by the State Board is at too high a rate when the property is assessed at a greater proportion of its actual value than is adopted by the board at the same time in the assessment of all other property. *People's Gas Light Co. vs. Stuckart*, 286—164.

An assessment of capital stock arbitrarily made by State Board in disregard of its own rules for assessing capital stock of all corporations and without any attempt to ascertain the actual value of such capital stock by any methods open to it cannot be sustained. *Calumet Dock Co. vs. O'Connell*, 265—106; *People's Gas Light Co. vs. Stuckart*, 286—164.

Capital stock of advertising company organized to do general advertising publishing and printing cannot be assessed by State Board of Equalization, as business need not be exclusively printing to exempt capital stock from assessment by State Board. *Taylor-Critchfield Co. vs. Stuckart*, 275—129.

A corporation organized to buy and sell stocks and bonds of other companies and to guarantee such stocks and bonds is a mercantile corporation. *People vs. Federal Security Co.*, 255—561.

Assessment of franchise of corporation having the power, in addition to manufacturing, to own real estate and water power and lease and sell water power to others for manufacturing purposes, by local assessor is void. *Moline Water Power Co. vs. Cox*, 252—348.

State Board of Equalization has no power to assess capital stock of mercantile corporation even though the local assessor does not do so. *People vs. Lewy Bros. Co.*, 250—613.

While the State Board is not necessarily bound by market quotations of shares of stock in determining their value yet such quotations cannot be

disregarded and an assessment of capital stock made without evidence and in violation of rules of board cannot be sustained, though the assessment of tangible property by assessor is lower than it should be. *Calumet Dock Co. vs. Stuckart*, 275—253.

Under the rules of State Board, where there are no debts to be added to the fair cash value of shares of stock, an assessment of the capital stock can be made only in case the equalized fair cash value of the shares exceeds the equalized valuation of the tangible property. *Calumet Dock Co. vs. Stuckart*, 275—253.

Powers of commission.] Section 3. The Tax Commission shall have power:

(1) To require local assessment officers to meet with it from time to time for the purpose of considering matters relative to taxation.

(2) To formulate and recommend legislation for the improvement of the system of taxation of property and for the equalization of the taxation of the State;

(3) To make such research and investigation as to the properties of corporations and the true values of the franchise and properties of all corporations incorporated under the laws of this State, except companies and associations organized for purely manufacturing and mercantile purposes, or for either of such purposes, or for the mining and sale of coal, or for printing or for the publishing of newspapers or for the improving and breeding of stock, or for the purpose of banking, as will enable it to ascertain the fair cash value of the capital stock, including the franchise, of such corporations as are assessed by it and to obtain such further data and information upon which general rules and regulations may be based;

(4) To investigate the tax system of other states and countries;

(5) To request the institution of proceedings, actions and prosecutions to enforce the laws relating to the penalties, liabilities and punishment of public officers, persons, or officers or agents of corporations for failure or neglect to comply with this Act;

(6) To order in any year a re-assessment of all real and personal property, or real or personal property, or any class of personal property, in any county, or in any assessment district thereof, when in its judgment such re-assessment is desirable or necessary, and for that purpose to cause such re-assessment to be made by the local assessment officers, and cause it to be substituted for the original assessment;

(7) To take testimony and proofs under oath and to require the production of books, papers and documents pertinent to any assessment, investigation or inquiry and for that purpose to subpoena and compel the attendance of witnesses;

(8) To require from all State and local officers such information as may be necessary for the proper discharge of its duties;

(9) To examine and make memoranda from all records, books, papers, documents, statements of account on record or on file in any public office of the State or of any county, township, road district, city, village, incorporated town, school district or any other taxing district of the State and all public officers having charge or custody of such records shall furnish to the commission information of any and all matters on file or of record in their respective offices:

(10) To adopt, from time to time, rules not inconsistent with law, for ascertaining the fair cash value of the capital stock, including the franchise, of corporations assessed by it.

Certified copies of records—evidence.] Section 4. Certified copies of the records of the Tax Commission pertaining to the assessment of property and the equalization of assessments, attested by the seal of the Department of Finance, shall be received in evidence in all courts with like effect as certified copies of other public records.

Power to administer oaths.] Section 5. Each officer in the Tax Commission, each employee of the commission and each other competent person specially delegated in writing for that purpose, shall have the power to administer all oaths authorized or required under the provisions of this Act.

Service of subpoena.] Section 6. Any sheriff, constable or other person may serve any subpoena issued under the provisions of this Act.

Fees and mileage of witnesses.] Section 7. The fees and mileage of witnesses attending any hearing held by the tax commission under the provisions of this Act, pursuant to any subpoena, shall be the same as those of witnesses in civil cases in the Circuit Court in counties of the second class. Such fees and mileage shall be paid by the State.

Compliance with subpoena—contempt.] Section 8. In case any person refuses to comply with any subpoena issued by the Tax Commission, or to produce or to permit the examination or inspection of any books, papers and documents pertinent to any assessment, investigation or inquiry, or to testify to any matter regarding which he may be lawfully interrogated, the Circuit Court or County Court of the county in which such matter or hearing is pending, on application of the Tax Commission, shall compel obedience by attachment proceedings as for contempt, as in a case of disobedience of the requirements of a subpoena from such court on a refusal to testify therein.

Publication of assessment—review and correction.] Section 9. Upon the completion of the original assessments to be made by the Tax Commission, it shall publish a full and complete list of such assessments in the State “official newspaper.” Any person or corporation feeling aggrieved by any such assessment may, within ten days of the date of publication of such “official newspaper” containing such list, apply to the Tax Commission for a review and correction of the assessment complained of. Upon such review the Tax Commission may make such correction, if any, therein as may be just and right.

Person aggrieved — appeal — record.] Section 10. Any person feeling himself aggrieved by any assessment made by the Tax Commission may appeal to the Circuit Court of the county in which such property or some part thereof is situated, for the purpose of having the lawfulness of such assessment inquired into and determined.

The person taking such appeal shall file with the Tax Commission written notice of such appeal, which notice shall state in full the grounds of such appeal. Such notice of appeal shall be filed within ten days after such assessment is made and notice given thereof. Thereupon the Tax Commission shall prepare and transmit to the clerk of the court to which such appeal is taken a copy of such notice of appeal and a copy of all evidence, documents, papers, books and files pertaining to such appeal, which copies shall be certified to as correct by the Director of Finance. The appeal shall be heard without formal pleadings upon the record so certified by the Tax Commission. Appeals shall lie from the judgment of the Circuit Court to the Supreme Court. The remedy by appeal herein provided for shall not be construed to be exclusive.

Appeal not to stay assessment or extension of taxes — refund.] Section 11. No appeal to the Circuit Court from an assessment made by the tax commission shall stay or suspend any assessment or the extension of any taxes thereon. If the court, by its final judgment, should set aside or reduce such assessment, and the taxes so erroneously assessed shall have been paid, the person or corporation so erroneously paying such taxes shall be entitled to a refund thereof as provided by section 268 of an Act entitled, “An Act for the assessment of property and for the levy and collection of taxes,” approved March 30, 1872, in force July 1, 1872.

Re-assessments — order — where filed.] Section 12. Whenever it shall appear to the Tax Commission that the real or personal property in any county, or in any assessment district thereof, has not been assessed in substantial compliance with law, or has been un-

equally or improperly assessed, the Tax Commission may, in its discretion, in any year order a re-assessment for such year of all or any class of the taxable property in such county, or assessment district thereof. The Tax Commission may order such re-assessment made by the local assessment officers. The order directing such re-assessment shall be filed in the office of the county treasurer of the county in which such re-assessment has been ordered, except in counties having an elective board of review in which case such order shall be filed with the board of review.

Re-assessment how made and reviewed.] Section 13. Such re-assessment shall be made in the same manner and subject to the same laws and rules as an original assessment and shall be subject to review and correction by the board of review as in case of an original assessment.

Board of review—correction of re-assessment—notice.] Section 14. For the purpose of reviewing and equalizing such re-assessment, the board of review of the county in which the re-assessment is made, shall review and correct such re-assessment. The Tax Commission shall fix the time and place of the meeting of the board of review to review and correct such re-assessment. At least one week before the meeting of such board of review to review and correct such re-assessment, the board of review shall publish a notice of the time and place of its meeting for such purpose in at least one newspaper of general circulation published in the county in which such re-assessment is made. The board of review shall convene at the time and place fixed in such order and shall review, correct, return and certify such re-assessment in like manner, and shall have and exercise all the powers and authority given to boards of review and shall be subject to all the restrictions, duties and penalties of such boards.

Custody of assessment books.] Section 15. Such local assessment officer while engaged in making such re-assessment, shall have custody and possession of the assessment books containing the original assessment and all property and other statements and memoranda relating thereto, and the person having the custody thereof shall deliver such assessment books and such property to the local assessment officer on demand. He shall, in making such re-assessment, have all the power and authority given by law to local assessment officers and shall be subject to all the restrictions, liabilities and penalties imposed by law upon local assessment officers.

Re-assessment the assessment upon which taxes levied.] Section 16. Such re-assessment, when completed and reviewed as provided

herein, shall be the assessment upon which taxes for that year shall be levied and extended in the county or assessment district for which made.

Books, records and blanks — compensation.] Section 17. The necessary books, records and blank forms needful for the purpose of such re-assessment shall be furnished by the same authorities that furnish books, records and blank forms for an original assessment. The local assessment officer and the members of the board of review when convened in extraordinary session for the purpose of making such re-assessment or of reviewing and correcting the same shall receive the same compensation as for like service in making, or in reviewing, an original assessment, which compensation, as well as all other expenses in making the re-assessment, shall be paid by the county on the certificate of the Tax Commission.

Equalization — commission as authority — not to reduce aggregate assessed value in state.] Section 18. The Tax Commission shall act as an equalizing authority. It shall examine the abstracts of property assessed for taxation in the several counties as returned by the county clerks and the original assessments made by it, and shall equalize the assessments as in this Act provided. The Tax Commission may so lower or raise the total assessed value of property in any county as returned by the county clerk as shall make the property in such county bear a just relation to the assessed value of property in other counties. The total amount of such increase or decrease in any one county shall not exceed ten per cent of the total assessed value of all property in the State as returned for purposes of taxation. The Tax Commission shall not reduce the aggregate assessed valuation in the State; nor shall it increase such aggregate valuation, except in such amount as may be necessary to a just equalization.

Classes of property considered — rates even and not fractional and not combined.] Section 19. The Tax Commission in equalizing the valuation of property as listed and assessed in different counties, shall consider the following classes of property separately, viz: personal property, railroad and telegraph property; lands; town and city lots; and the capital and other property of public utilities and of companies and associations assessed by the Tax Commission and, upon such consideration determine such rates of addition to or deduction from the listed or assessed valuation of each of such classes of property in each county, or to or from the aggregate assessed value of each of such classes in the State, as may be deemed by the

Tax Commission to be equitable and just, such rates being in all cases even and not fractional; and such rates, as finally determined by the tax commission shall not be combined.

Personal property.—How to be equalized.] Section 20. In equalizing the value of personal property between the several counties, the Tax Commission shall cause to be obtained the State averages of the several kinds of enumerated property, from the aggregate footings of the number and value of each; and the value of the several kinds of enumerated property in each county shall be obtained at those average values; and the value of the enumerated property thus obtained, as compared with the assessed value of such property in each county shall be taken by the Tax Commission to obtain a rate per cent. to be added to or deducted from the total assessed value of such property in each county. Whenever, in the opinion of the Tax Commission it is necessary, to a more just and equitable equalization of such property, that a rate per cent be added to or deducted from the value thus obtained in any one or more of the counties, the Tax Commission shall have the right so to do; but the rate per cent heretofore required shall first be obtained to form the basis upon which the equalization of personal property shall be made.

Lands and lots.—How to be equalized.] Section 21. Lands shall be equalized by adding to the aggregate assessed value thereof, in every county in which the Tax Commission may believe the valuation to be too low, such rate per centum as will raise the same to its proper proportionate value, and by deducting from the aggregate assessed value thereof, in every county in which the Tax Commission may believe the valuation to be too high, such per centum as will reduce the same to its proper value. Town and city lots shall be equalized in the same manner herein provided for equalizing lands, and, at the option of the Tax Commission may be combined and equalized with lands.

Assessment of railway property at two-thirds of actual value, and other property at one-third, to equalize an alleged deficiency, invalid. *C. & A. R. Co. vs. Livingston Co.*, 68—458.

Tract in city held to be lot, though not platted. Whether it was a lot or land made considerable difference in this case in figuring amount of addition by State Board of Equalization. *P. vs. Palmer*, 113—346.

Results combined in one table.] Section 22. When the Tax Commission shall have separately considered the several classes of property as hereinbefore required, the results shall be combined in one table, and the same shall be examined, compared and perfected in such manner as the Tax Commission shall deem best to accom-

plish a just equalization of assessments throughout the State, preserving, however, the principle of separate rates for each class of property.

Partial returns from any county.] Section 23. In all cases of partial return from any county where the number of defaulting towns or districts does not exceed one-third of the whole number of towns or districts in the county, the Tax Commission may estimate the valuation in the towns or districts from which returns have not been received and may equalize the total valuation as in other cases.

Rate determined certified to clerk — assessment on capital stock of corporations — railroad and telegraph companies.] Section 24. When the Tax Commission shall have completed its equalization of assessments for any year, it shall certify to the several county clerks the rates finally determined by it to be added to or deducted from the listed or assessed valuation of each class of property in the several counties. The respective assessments made by it on the capital stock, including the franchise, of corporations assessed by it (other than of the capital stock of railroads and telegraph companies) shall be certified by it to the county clerks of the respective counties in which such companies or associations are located. And said clerk shall extend the taxes for all purposes on the respective amounts so certified, the same as may be levied on the other property in such towns, districts, villages or cities in which such companies or associations are located. It shall also certify to the county clerk of the proper counties the assessments of "railroad track" and "rolling stock", and the assessments of the capital stock, including the franchise, of railroad and telegraph companies. And the county clerk shall distribute the value so certified to him to the county and to the several towns, districts, villages and cities in his county entitled to a proportionate value of such "railroad track" and "rolling stock", and capital stock, and shall extend taxes against such values the same as against other property in such towns, districts, villages and cities.

Records, etc., to be delivered to commission.] Section 25. All records, books, papers, documents and memoranda pertaining to the State Board of Equalization shall, upon the taking effect of this Act, be transferred and delivered to the Tax Commission.

Powers and duties imposed on board of equalization and auditor to be exercised by commission.] Section 26. On and after the taking effect of this Act all the powers and duties now conferred or imposed upon the State Board of Equalization and upon the Auditor of Public Accounts in relation to the assessment of property

for taxation shall be transferred to and thereafter shall be exercised and performed by the Tax Commission.

Abstracts, other papers, etc., to be filed with commission.] Section 27. Whenever, in any law relating to the assessment of property for taxation, abstracts, reports, or schedules or other papers or documents, are required to be filed with, or any duty is imposed upon, or power vested in either the Auditor of Public Accounts or the State Board of Equalization, such abstracts, reports, schedules, or other papers or documents shall be filed with, such duty and power shall be discharged and exercised by the Tax Commission.

Commission no power to change individual assessment.] Section 28. Nothing contained in this Act shall be construed to give the Tax Commission any power, jurisdiction or authority to review, revise, correct or change any individual assessment made by any local assessment officer.

Repeal.] Section 29. The following Acts and parts of Acts are hereby repealed:

Sections 100 to 116, both inclusive, of an Act entitled, "An Act for the assessment of property and for the levy and collection of taxes," approved March 30, 1872, in force July 1, 1872, and amendments thereto;

Sections 50 and 51 of an Act entitled, "An Act for the assessment of property and providing the means therefor, and to repeal a certain Act therein named," approved February 25, 1898, in force July 1, 1898, and amendments thereto.

Section 25 of an Act entitled, "An Act in regard to elections, and to provide for filling vacancies in elective offices," approved April 3, 1872, in force July 1, 1872.

REVENUE ACT OF 1898.

AN ACT for the assessment of property and providing the means therefor, and to repeal a certain act therein named. [Approved February 25, 1898. In force July 1, 1898. L. 1898, p. 34.]

In General:

The Revenue Act of 1898 is constitutional. *People (ex rel.) vs. Comrs. of Cook County*, 176—576.

Revenue Law of 1898 governs assessment of property and is a substitute substantially complete in itself for the provisions of general Revenue Law on that subject. *People vs. Fisher*, 274—116.

Tax-payer has no vested right under statutes which fix basis for assessing property, as that entire subject is within control of the legislature. *People vs. Chicago & E. Ill. R. Co.*, 248—118; *P. vs. Board of Review*, 290—167.

Under Revenue Act of 1898 it was not the intention of the General Assembly to require county clerk to provide duplicate assessment books for the

listing and assessment of personal property, to be delivered to the supervisor of assessments for the use of the assessors. *People vs. Hendee*, 108 A. 591.

County assessor in counties not under township organization — Compensation.] Section 1. That in counties not under township organization the county treasurer shall be ex officio county assessor, and he shall receive as compensation for his services as county assessor, the sum of five hundred dollars (\$500) per annum: Provided, that in counties having a population of less than 125,000 and over 50,000, he shall receive the sum of one thousand dollars (\$1,000) per annum. [As amended by act approved May 15, 1903. In force July 1, 1903. L. 1903, p. 295.

In counties not under the township organization, compensation as county treasurer fixed by county board includes payment for his services as ex-officio county assessor. *People vs. Wabash R. Co.*, 281—311.

In counties under township organization — Assessor — Powers, duties and compensation of.] Section 2. In counties under township organization of less than 125,000 inhabitants, the county treasurer shall be ex officio supervisor of assessments in his county, and shall receive as compensation for his services as supervisor of assessments the sum of one thousand dollars (\$1,000) per annum: Provided, that in counties having a population of less than 45,000 he shall receive the sum of five hundred dollars (\$500) per annum. He shall have a suitable office, to be provided and furnished by the county board, in which he shall keep, subject to the inspection of all persons who shall desire to consult the same, the assessment books returned to him as directed by law. He shall keep his office open for business from 9 o'clock a. m. to 5 o'clock p. m. of every day except Sundays and legal holidays. He may, by and with the advice and consent of the county board, appoint necessary deputies and clerks, their compensation to be fixed by the county board and paid by the county. The supervisor of assessments shall, on or before the first day of April in each year, assemble all assessors and their deputies for consultation, and shall give such instructions to them as shall tend to a uniformity in the action of the assessors and deputy assessors in his county. Any assessor or deputy assessor who shall willfully refuse or neglect to observe or follow the direction of the supervisor of assessments, which shall be in accordance with law, shall, upon conviction thereof in any court of competent jurisdiction, for each offense be fined not less than fifty dollars nor more than five hundred dollars, or be confined in the county jail not exceeding six months, in the discretion of the court. In counties under township organization where a town assessor shall be unable

alone to perform all the duties of his office, he may, by and with the advice and consent of the town board of auditors first obtained, appoint one or more suitable persons to act as deputies to assist him in making the assessment. The compensation of the township assessors shall be as follows: In townships containing not less than five thousand (5,000) inhabitants they shall receive not less than five dollars (\$5.00) nor more than ten dollars (\$10) per day: Provided, that in townships containing more than fifteen thousand (15,000) inhabitants, additional compensation may be allowed, making their entire compensation for making the assessment a sum not exceeding one thousand dollars (\$1,000); in townships containing less than five thousand (5,000) inhabitants they shall receive not less than two and one-half dollars (\$2.50) nor more than five dollars (\$5.00) per day; necessary deputy assessors shall receive not exceeding five dollars (\$5.00) per day. The compensation as herein provided shall be fixed by the board of town auditors and shall be based upon the time actually employed in the making of such assessment, and such assessors and deputies shall make affidavit of the time so employed. Population as herein used shall be deemed to be the population of such townships as ascertained by the last preceding federal and school census. [As amended by act approved May 15, 1903. In force July 1, 1903. L. 1903, p. 295.]

The provisions making county treasurer ex-officio supervisor of assessments do not create a new office but simply add other duties to the office of county treasurer and he is not entitled to separate compensation as supervisor of assessment. *Foot v. Lake County*, 206—165; *Allen v. Fidelity Co.*, 269—234.

In counties containing 125,000 or more inhabitants—Board of Assessors—Election of—Organization of—Powers and duties—Deputy Assessors—Appointment of.] Section 3. In all counties of this State containing one hundred and twenty-five thousand or more inhabitants there is hereby created and established a board of assessors, consisting of five persons, not more than four of whom shall be residents of any one city, to be known as the board of assessors of said county. At the regular county election to be held in such county in the year 1898 for the election of county officers there shall be elected by the legal voters of said county five assessors, whose terms of office shall commence on the first day of January next ensuing, who shall hold their office, two for two years, two for four years, and one for six years, respectively, and until their successors are elected and qualified. And every two years thereafter, at the regular county election in said county for the election of county officers, there shall be elected an assessor, or two assessors, as the

case may be, to succeed the assessor or assessors whose term of office shall expire that year, whose term of office shall commence on the first day of January next following, and shall be six years in duration and until his or their successors shall be elected and qualified. The assessors so elected shall qualify within ten days after the canvass of the vote is completed. Such assessors shall hold no other lucrative public office or public employment. Each of said assessors, before entering upon the duties of his office, shall take and subscribe the oath provided for in this act. At the first meeting of the board of assessors they shall determine by lot which of them shall hold office for the respective terms. The chairman of the board shall be the person having the shortest term to serve. In the years when two persons shall be serving the shortest term it shall be determined by lot which of such two persons shall be chairman. Each assessor shall receive as compensation such sum as may be fixed by the county board, to be paid out of the county treasury.

In case of any vacancy in said board, or the failure of any person elected to that office to qualify, the board of review provided for in such counties may appoint a person to fill such vacancy until his successor shall be elected at the next regular county election.

Said board of assessors shall have power to employ a chief clerk, who shall have charge of the office of such board, and such other clerical help as may be necessary, subject to the approval of the board of review as to the number thereof, who shall hold office during the pleasure of the board, and who shall take and subscribe an oath of office that he will honestly and faithfully perform all duties of such office under the direction of said board, and he shall have power to administer all oaths authorized by law to be administered by assessors, and the compensation of such clerk shall be fixed by such board, subject to the approval of the board of review, not to exceed ten dollars per day, for each working day.

In all townships in such counties not lying wholly within the limits of one city, the township assessor shall be ex-officio the deputy assessor to make the assessments in the township, wherein he is elected. **Provided**, that if, in any such township, said township assessor shall not be able, by himself alone, within the time allowed by law to make the assessment of said township, then any additional deputy assessor or deputy assessors required to make such assessment, shall be residents and legal voters of such township, and shall be nominated by the board of auditors of such township, and appointed by the board of assessors only upon such nomination, and deputy assessors so appointed shall act under the supervision of

the ex-officio deputy town assessors. [As amended by act approved June 26, 1913. L. 1913, p. 511.]

In regard to appointment of five assessors, as the Act merely provides means of assessment and is not an attempt to regulate county and township affairs. Section above held constitutional. *Burton Stock Car Co. vs. Traeger*, 187—17.

Assessor and supervisor of assessments to give bond—Form of oath.] Section 4. Every assessor and supervisor of assessments shall, before he enters upon the duties of his office, enter into a bond, payable to the People of the State of Illinois, in the sum of two thousand dollars or such larger sum as the county board shall determine, with two or more sufficient sureties, to be approved by the president or chairman of the county board, except in the case of the supervisor of assessments, whose bond shall be approved by the county board. Provided, that township assessors in counties having less than one hundred and twenty-five thousand inhabitants shall be required to give bond only in the sum of five hundred dollars each, with sureties as above provided. Said bond to be approved by the supervisor of their respective towns. The condition of the bond shall be that such assessor or supervisor of assessments, as the case may be, will diligently, faithfully and impartially perform each and singular the duties enjoined upon him by law. Such bond shall be filed in the office of the county clerk and recorded at large in a book to be provided for such bonds. The State, county, town or any municipality, corporation or person suffering any loss or damage by reason of any failure to keep and perform any of the conditions of the bond to the best of his ability may recover thereon for their or his use by suit in the name of the People of the State of Illinois. And every assessor, deputy assessor or supervisor of assessments, shall, also, before entering upon the duties of his office, take and subscribe to an oath, which oath shall also be filed in the office of the county clerk: Provided, that the oath of township assessors and their deputies shall be filed with their respective town clerks. Said oath to be as follows:

I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of Illinois, and that I will faithfully discharge all the duties of the office of assessor, deputy assessor or supervisor of assessments (as the case may be) to the best of my ability; that I will without fear or favor appraise all the property in said county at its fair cash value, said value to be ascertained at what the property would bring at a voluntary sale in the due course of business and trade; and that I will assess said property when so appraised at one-fifth of its said cash value; that I will cause every person, company or corpora-

tion assessed to sign his, her or its assessment schedule, and I will administer to each and every person so signing said assessment schedule the oath thereon, and return said schedule so signed and file the same with the county clerk.

Assessor, etc.—Penalty for neglect of duty.] Section 5. Any assessor or deputy assessor or supervisor of assessments or other persons, whose duty it is to assess property for taxation or equalize any such assessment, who shall refuse or knowingly neglect to perform any duty required of him by law, or who shall consent to or connive at any evasion of the provisions of this act whereby any property required to be assessed shall be unlawfully exempted in whole or in part or the valuation thereof entered or set down at more or less than is required by law, shall, upon conviction, be fined for each offense not less than one hundred dollars nor more than five thousand dollars and imprisoned in the county jail not exceeding one year, and shall also be liable upon his bond to the party injured for all damages sustained by such party, as above provided.

Appointment of deputy assessors—Term of office—Fees—Oath—Maps.] Section 6. The board of assessors shall have power to appoint as many suitable persons as in their judgment are necessary to act as deputies, subject to the approval of the board of review as to the number and time of service of such deputies to assist them in making the assessment, who shall perform such duties as may be assigned to them by the board of assessors. They shall hold their office during the will of the board of assessors, and shall receive such compensation as shall be determined by the board not exceeding five dollars (\$5.00) per day: Provided, that the assessors and deputy assessors of counties of one hundred and twenty-five thousand inhabitants or over shall be paid for their services out of the county treasury. Such deputy assessors shall, before entering upon their duties, take and subscribe the oath or affirmation prescribed for the assessors.

The board of assessors shall have power and authority to make and purchase such maps and plats as will facilitate the business of their office, which maps and plats shall always be and remain in their office, and shall be open and accessible to the public. [As amended by act approved and in force April 24, 1899. L. 1899, p. 335.]

What property subject to assessment and taxation.] Section 7. All property in this State shall be subject to assessment and taxation as provided by the general laws for the assessment of property and for the levy and collection of taxes except such property as may be

exempt therefrom by such general laws. Such property shall be listed and valued in the manner and by the persons heretofore provided by law except as herein otherwise expressly provided.

Property, when, how and by whom listed.] Section 8. All property subject to taxation shall be listed by the person at the place and in the manner required by law, and assessed at the place and in the manner required by law with reference to the ownership, amount, kind and value on the first day of April in the year for which the property is required to be listed including all property purchased on that day. The owner of property on the first day of April in any year shall be liable for the taxes of that year.

The purchaser of property on the first day of April shall be considered as the owner on that day.

Real property—When and how listed and assessed.] Section 9. All real property subject to taxation under the general revenue laws of the State, including real estate becoming taxable for the first time shall be listed in the name of the owner thereof by such owners, or persons required by law, or their agents, or the officers provided by law, and assessed for the year one thousand eight hundred and ninety-nine (1899), and every fourth year thereafter, with reference to the amount owned on the first day of April in the year in which the same is assessed, including all property purchased on that day, which assessment shall be known as the general assessment, and as modified or equalized or changed as provided by law, shall be the assessment upon which taxes shall be levied and extended during the quadrennial period for which the same is made: Provided, that no assessment of real property shall be considered as illegal by reason of the same not being listed or assessed in the name of the owner or owners thereof.

The case of *Crozer vs. People*, 206—464, holding real estate is to be assessed once every four years, was decided before the amendment of 1905 to Sec. 35, which as amended gives board of review power to change the assessment of real property when it does not represent a fair valuation, although there has been no change in the property and this applies to counties of less than 125,000 population. *People (ex rel.) vs. St. Louis Bridge Co.*, 281—462.

If Sanitary District desired to have its land which it claims is farm land assessed separately from its other property, it should furnish a description of such land to the proper officials before assessment is made. *Sanitary Dist. vs. Gifford*, 257—424.

Where mining rights are purchased at a time intervening two quadrennial assessments, they may be assessed before the next quadrennial assessment as real estate, and if the value thus assessed against the mining rights should be deducted from the assessment of the remaining real estate,

the owner of that, and not the owner of the mining rights, is the one to complain. *Re Appeal Maplewood Coal Co.*, 213—283.

County clerk to make up duplicate books of lands or lots to be assessed for taxes—when triplicate.] Section 10. The county clerk shall before the first day of April, in the year 1907, and every fourth year thereafter, make up, in books to be provided for that purpose, a list of lands and lots to be assessed for taxes in the manner provided in the general revenue law. He shall also annually after the adoption of this act before the first day of April make a list of lands and lots which are taxable, or which shall become taxable for the first time, and which are not already listed, and a list of lands and lots which have been subdivided and not listed by the proper description. Such lists shall be made up in the manner in which the county clerk is required by the general revenue law to make such lists: [Provided, that in counties of 125,000 inhabitants, or over, said books shall be made in triplicate.] [As amended by act approved May 18, 1905. In force July 1, 1905. L. 1905, p. 360.]

When books and blanks for the assessment to be delivered to assessor, etc.] Section 11. It shall be the duty of the county assessor, the board of assessors, or the supervisor of assessments, as the case may be, to call upon the county clerk on or before the first day of April in each year and receive the assessment books and blanks as prepared by said county clerk for the assessment of property for that year.

When and how the assessor shall assess property.] Section 12. The assessor shall, before the first day of June in the year 1899 and every fourth year thereafter, in person or by his deputy, actually view and determine as near as practicable the value of each tract or lot of land listed for taxation as of the first day of April of each year, and assess the same at the value required by law, setting down the sum in proper columns prepared therefor in duplicate books furnished him. In making such assessments he shall set down his valuation of improved tracts and lots in one column, and his value of unimproved tracts and lots in another column. He shall, also, between the first day of April and the first day of June in each intervening year, list and assess in like manner all real property which shall become taxable and which is not upon the general assessment, and also make and return a list of all new or added buildings, structures or other improvements of any kind, the value of which shall not have been previously added to or included in the valuation of the tract or lot on which such improvements have been erected or placed, specifying the tract or lot on which each of said improvements has been erected or placed, the kind of improvement and the

value which, in his opinion, has been added to such tract or lot by the erection thereof; and in case of the destruction or injury by fire, flood, cyclone, storm or otherwise, or removal of any structures of any kind, or of the destruction of or any injury to orchard, timber, ornamental trees or groves, the value of which shall have been included in any former valuation of the tract or lot on which the same stood, the assessor shall determine as near as practicable how much the value of such tract or lot has been diminished in consequence of such destruction or injury, and make return thereof. And in case any assessor shall fail or neglect so to do, then the supervisor of assessments shall, in the case of such new or added improvements, assess the same according to the assessment of the same property in the general assessment, and in the case of such destruction shall abate from the assessment of the tracts or lots so damaged or lessened the proper proportion thereof, estimated according to the same principles; in counties containing one hundred and twenty-five thousand or more inhabitants such books shall be made up by townships.

Since the amendment of 1905 to Sec. 35, the board of review has power in any year, whether it is the year of the quadrennial assessment or not, to change the assessment of real property as made in the quadrennial year when it does not represent a fair valuation, although there has been no improvements or other change in the property. *People (ex rel.) vs. St. Louis Bridge Co.*, 281—462 (Overruled 230—61).

Original assessment of property must be listed, classified and valued according to the statute and cannot be made by assessing a lump sum as the value of all the property of a tax payer. *People vs. St. Louis Bridge Co.*, 268—477.

Under Sec. 306 of Revenue Act, "All real property which shall become taxable and which is not upon the general assessment," refers to two classes; all real property which shall become taxable after the county clerk has made out the lists, and all real property which is not upon the lists. The board of assessors has the right to assess the property for the year the assessment was made, that was so omitted from the lists, or became taxable after they are made out, conceding that it has not the power so to do for previous years. It is not required to give notice of such assessment, as the law prescribing the time when complaints will be heard before the Board of Review is all notice that is required. *People vs. Salt Co.*, 233—223.

In the absence of evidence as to when assessment was actually made, the date when taxes assessed became a lien being April 1st, must be considered as the date of assessment. *Morrison vs. Moir Hotel Co.*, 204 A. 433.

Lists—When valuation and entries to be made in duplicate and when in triplicate books—Alteration—Subdivision.] Section 13. All such lists, valuations and entries shall, in counties of 125,000 inhabitants or over, be made in triplicate assessment books; in all other counties in duplicate books. The assessor shall, also, from

time to time, make such alterations in the description of real property as he may find necessary, and when real property has been subdivided since the making of the general assessment, shall from time to time correct the description so that they shall correspond to the subdivision, and distribute the assessment in the proper proportions among the lots or parcels into which the land shall have been subdivided; and in case of a vacation of a subdivision readjust the description of the assessment accordingly. [As amended by act approved May 18, 1905. In force July 1, 1905. L. 1905, p. 360.]

When lands change in value.] Section 14. On or before the first day of June in each year, other than the year of the quadrennial assessment, the assessor shall determine the amount, in his opinion, of any change in the value of any tracts or lots of land by reason of any injury to, alteration in or addition to, the improvements thereon since the first of April in the preceding year and prior to the first of April in the current year, and add to or deduct from the assessment accordingly, setting down the amount of such change in a proper column in the assessment books. The value of lands and improvements shall be separately fixed, and shall in any assessment made hereafter be set down in separate columns in said assessor's books. The assessor shall not in any year, except the year of the quadrennial assessment, change the valuation of any real estate or improvements or the division thereof, except as above provided in this section: Provided, however, that if at any time before judgment or order of sale therefor the said assessors shall discover an error or mistake (other than errors of judgment as to the valuation of any real or personal property) in any assessment of any property belonging to any person or corporation, they shall issue to the person or corporation erroneously assessed a certificate setting forth the nature of such error and the cause or causes which operated to produce the same, which said certificate, when properly endorsed by the majority of board of review, showing their concurrence therein, and not otherwise, may be used in evidence in any court of competent jurisdiction, and when so introduced in evidence such certificate shall become a part of the court record and shall not be removed from the files except on an order of the court. [As amended by act approved May 18, 1905. In force July 1, 1905. L. 1905, p. 360.]

The provision that the value of lands and lots shall be separately fixed and set down in separate columns in the assessor's books refers to the assessor and not the board of review. *People vs. St. Louis Bridge Co.*, 281—462.

Judgment of assessor as to whether there has been any change in value of property in any other year than that of the quadrennial assessment is conclusive on the court in the absence of fraud, but is subject to revision by the board of assessor and for a further review by the board of review. *People vs. Robert White & Co.*, 286—259.

The certificate to correct error or mistake authorized to be issued under the proviso to this section must be issued before the judgment or order of sale for the tax is rendered and the proviso expressly excludes error of judgment as to valuation of property being corrected. *People vs. Robert White & Co.*, 286—259.

Personal property—When and how valued.] Section 15. Personal property shall be valued as and in the manner required by law, and shall be listed between the first day of April and the first day of June of each year when required by the assessor, with reference to the quantity held or owned on the first day of April in the year for which the property is required to be listed. Personal property purchased or acquired on the first day of April shall be listed by or for the person purchasing or acquiring it.

When and how personal property to be listed.] Section 16. The assessor or his deputy shall annually, between the first day of April and of June, list the taxable personal property in his county, town or district, and assess the value thereof as of the first day of April, in the manner following, to wit: He shall call at the office, place of doing business or residence of each person required by this act to list property and list his name, and shall require such person to make a correct statement of the taxable property in accordance with the provisions of this act, and the person listing the property shall enter a true and correct statement of such property owned by him on the first day of April of that year, in the form prescribed by law, which shall be signed and sworn to to the extent required by this act by the person listing the property, who shall deliver such statement to the assessor; and the assessor shall thereupon assess the value of such property, and enter the valuation in his books: Provided, if any property is listed or assessed on or after the first day of June, the same shall be as legal and binding as if listed and assessed before that time.

Schedule—Assessed value.] Section 17. The assessor shall furnish to each person required to list personal property a printed blank schedule, forms to be furnished by the Auditor of Public Accounts (Tax Commission), upon which shall be printed a notice substantially as follows:

"This schedule must be filled out, sworn to and returned to me in person or by mail at.....(Address)
.....on or before.....

You are to give a full, fair cash value of the articles mentioned as well as the amount of money required to be returned. Only one-half of the several amounts will be taken and assessed for the purpose of taxation.

(Signature).....

Assessor."

There shall also be printed upon such blank the schedule now required by law, and the following, which is a part of this section: And every person required to list personal property or money shall fill out, subscribe and swear to, and return to the assessor, in person, or by mail, at the time required, such schedule in accordance with law, giving the numbers, amounts, quantity and quality of all the articles enumerated in said schedule by him possessed, or under his control, required to be listed by him for taxation. The assessor shall determine and fix the fair cash value of all items of personal property, including all grain on hand on the first day of April, and set down the same, as well as the amounts of notes, accounts, bonds and moneys, in a column headed, "full value," and ascertain and assess the same at one-half part thereof and set down said one-half part thereof in a column headed "assessed value," which last amount shall be assessed value thereof for all purposes of taxation. The assessor or some person authorized by law to administer an oath, shall administer the oath required in this section. [As amended by act approved June 30, 1919. L. 1919, p. 727.]

Under Sec. 27 of Tax Commission Law, supra, when any schedules, etc., papers or other documents are required to be filed with, or any duty is imposed upon or power vested in the Auditor of Public Accounts such schedules, etc., papers or other documents shall be filed with, such duty and power shall be discharged and exercised by the Tax Commission. In the absence of fraud, accident or mistake, a property owner is bound by a schedule of his taxable personalty given by him to the assessor. People vs. I. C. R. Co., 273—220, 258.

The State is not bound by a valuation given by a property owner to the assessing officer. People vs. Ry. Co., 273—267.

How real and personal property shall be valued—State Board of Equalization.] Section 18. Personal property shall be valued at its fair cash value, less such deductions as may be allowed by law to be made from credits, which value shall be set down in one column, to be headed "full value," and one-half part thereof shall be ascertained and set down in another column which shall be headed "assessed value." Real property shall be valued at its fair cash value,

estimated at the price it would bring at a fair voluntary sale in the course of trade, which shall be set down in one column to be headed "full value," and one-half part thereof shall be set down in another column, which shall be headed "assessed value."

The State Board of Equalization (Tax Commission) in valuing property assessed by them shall ascertain and determine respectively the fair cash value of such property, which fair cash value shall be set down in one column to be headed "full value," and one-half part thereof shall be ascertained and set down in another column, which shall be headed "assessed value." The one-half value of all property so ascertained and set down shall be the assessed value for all purposes of taxation, limitation of taxation and limitation of indebtedness prescribed in the constitution or any statute. [As amended by act approved June 30, 1919. L. 1919, p. 727.]

Under Sec. 26 of Tax Commission Law, supra, all powers and duties conferred upon the State Board of Equalization in relation to assessment of property to be exercised and performed by Tax Commission.

Legislature has power to change assessed value after hard roads tax has been voted and tax must be extended upon assessed value fixed by law. *People (ex rel.) vs. Cairo, V. & C. R. Co.*, 247—327.

State tax against property of Illinois Central must be assessed on the same proportion of full cash value as other owners are assessed. *People vs. Illinois Central R. Co.*, 273—220.

Schedule—Penalty for not making.] Section 19. The assessor shall require every person to make, sign and swear to the schedule provided for by this act. If any person shall refuse to make the schedule herein required, or to subscribe and swear to the same, the assessor shall list the property of such person according to his best knowledge, information and judgment, at its fair cash value, and shall add to the valuation of such list an amount equal to fifty per cent. of such valuation.

Whoever in making such schedule shall wilfully swear falsely in any material matter shall be guilty of perjury and punished accordingly.

Assessor is not bound by items or valuation in unsworn schedule. *Moline Water Power Co. vs. Cox*, 252—348.

Penalty not imposed for failure to file schedule where it is not the result of attempt at concealment, but from honest belief property is exempt. *Monticello Seminary vs. Board of Review*, 249—481.

The provisions of this section are the same as those of Sec. 24 of the General Revenue Act, except the provision of Sec. 24, making it a misdemeanor to fail to make a schedule was omitted and is repealed. *People vs. Fisher*, 274—116.

Provision authorizing assessor to add 50 per cent where party makes no schedule is a penalty and not in violation of constitutional provision relating to levying taxes by valuation. *People vs. Fisher*, 274—116.

The provision of Sec. 24 of Revenue Act of 1872 was re-enacted as this section and is repealed. *People vs. Fisher*, 274—116.

Person refusing to sign and swear to schedule—Duty of assessor—Penalty.] Section 20. The assessor, deputy assessor, or some other person duly authorized by law to administer oaths, shall administer the oath or affirmation attached to the assessment schedule as provided by law, to each person or proper officer of corporation so assessed, and such person or officer of such corporation shall be required to sign said assessment schedule and swear to the same, and in case any one refuses so to do, the assessor shall note the fact in the column of remarks opposite such person's name; and any assessor failing to have said assessment schedule so signed by the person assessed and an oath administered as required by law, or failing to make such note that the person or proper officer of the corporation refuses so to do, shall for each offence be fined not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000).

Township assessor—Return of assessment books—Affidavit.] Section 21. The township assessor shall, on or before the first day of June for the year for which the assessment is made, return the assessment books to the county supervisor of assessments. Each of said books shall be verified by affidavit of the assessor substantially as follows:

State of Illinois,	}	ss.
County of.....		

I do solemnly swear that the book or books.... in number, as the case may be, to which this affidavit is attached, contains a full and complete list of all of the real and personal property in the township or assessment district herein described subject to taxation for the year.....so far as I have been able to ascertain the same, and that the assessed value set down in the proper column opposite the several kinds and descriptions of property is a just and equal assessment of such property according to law.

Authority of supervisor of assessments.] Section 22. The supervisor of assessments of the county shall have the same authority as the township assessor to assess, make changes or alterations in the assessment of property.

In counties having a board of assessors—Revision of assessment.] Section 23. In counties having a board of assessors such board shall meet on the first Monday of June in each year for the purpose of revising the assessment of real property, and on the third

Monday of June of each year for the purpose of revising the assessment of personal property. At such meeting the board of assessors, upon application of any taxpayer or upon their own motion, shall revise the assessment and correct the same as shall appear to them to be just. Such meeting may be adjourned from day to day, as may be necessary, and the board shall finish such revision upon or before the first day of July. When such revision is completed and the change and revisions entered in the assessment books, an affidavit shall be appended to each of such assessment books in the form required by law, signed by at least two of such assessors. Upon the signing of such affidavits the board of assessors shall have no further power to change the assessment or alter the assessment books so as to change or affect the taxes of that year.

Where a corporation returns its list of tangible property, together with capital stock schedule showing its capital stock had no value in excess of its tangible property, and thereafter obtains from clerk of board of assessors statement showing nothing assessed on capital stock which had been made by board without knowledge of corporation, whereby he makes no application to board of review, the tax on such capital stock is illegal, *People vs. Morton Salt Co.*, 285—180.

Where the board of assessors has completed the revision of assessment of personal property of a manufacturing or mercantile corporation and attached affidavit to books it cannot change assessment or alter books so as to change or affect taxes for that year. *C. P. Kimball & Co. vs. O'Connell*, 263—232.

Where the board of assessors has completed revision of its assessment of the personal property of a manufacturing or mercantile corporation and attached affidavit to books it cannot change the assessment or affect the taxes for that year. *C. P. Kimball & Co. vs. O'Connell*, 263—232.

Where the township assessor omits to assess any property, it is proper for the county board of assessors to assess same. *Elec. Ry. Co. vs. Vollman*, 213—611.

Term of township assessor, etc.] Section 24. The township assessor elected and qualified at the township election last preceding the date on which this act shall take effect, or in case of any vacancies in such offices, the persons appointed to fill such vacancies shall hold their offices and perform all the duties thereof until January 1, next following the date of the election of their successor, and thereafter their successors shall enter upon their duties on the first day of January next following their election, and perform the duties of said office for one year or until their successors are elected and qualified.

Office of Board of Assessors, etc., to be kept open during business hours, etc.—To furnish information to Board of Review, etc.]

Section 25. The office of the Board of Assessors, the county supervisor of assessments and the county assessor shall be open all the

year during business hours to hear or receive complaints or suggestions that real property has not been assessed at proper valuation. The supervisor of assessments, county assessor, or Board of Assessors, as the case may be, shall furnish to the Board of Review all books, papers and information in his or their office that said board may call for to assist them in the proper discharge of their duties.

Changes and alterations in assessment.] Section 26. The supervisor of assessments shall assess, make such changes or alterations in the assessment of property as though originally made, and in making such changes in valuation as returned by the township assessor such changes shall be noted in a column provided therefor, and no change shall be made in the original figures.

All changes and alterations in the assessment of real property shall be subject to revision by the Board of Review in the same manner that original assessments are reviewed.

County supervisor of assessments cannot change an assessment already made without giving notice to property owner. *People vs. St. Louis Bridge Co.*, 268—477.

The language authorizing county supervisors of assessment to make changes in assessments “as though originally made” does not mean that the assessor, in changing or altering an assessment already made, acts as an original assessor. *People vs. St. Louis Bridge Co.*, 268—477.

Person entitled to copy of the description, schedule, etc.] Section 27. The supervisor of assessments, or in counties having a board of assessors, the chief clerk when requested, shall deliver to any person a copy of the description, schedule, return or statement of property assessed in his name or in which he is interested, and the valuation placed thereon by the assessor or the Board of Review.

The board of assessors are not required to send notice of an assessment to property owner, but upon his request the clerk of board furnishes him a description of his assessed property and value thereof, and property owner furnished with such statement showing no capital stock assessment may rely thereon. *People vs. Morton Sale Co.*, 285—180.

Schedules and statements of personal property—Custody of.] Section 28. The Board of Assessors and the supervisor of assessments shall deliver all schedules and statements of personal property which have been received or made up by him or them to the Board of Review when required by them in the performance of their duties. Such schedules, after the assessment is fully completed, shall be returned to the supervisor of assessments or Board of Assessors and shall be preserved for at least two years.

Publication of assessment—Board of Review.] Section 29. As soon as the county assessor or supervisor of assessments shall have

completed the assessment in the year A. D. 1907, he shall cause to be published a full and complete list of such assessment by township or assessment districts, which publication shall be made on or before July 10, of each year in some public newspaper or newspapers printed and published in said county: Provided, that in every township or assessment district in which there is published one or more newspapers of general circulation the list of such township or assessment district shall be published in one of said newspapers so printed and published in said township or assessment district: And, provided, that said newspaper shall not receive for the publishing of said assessment list to exceed five (5) cents per name for each person or corporation so assessed, and ten (10) cents for each description of real estate, and if impossible to secure publication at that price, that the publication be let to the lowest bidder at a price not exceeding five cents per tract, to be printed in pamphlet form, and shall furnish to the county assessor, the county supervisor of assessments and the board of review as many copies of said paper containing the assessment list as they may require, said papers so furnished not to cost to exceed five (5) cents per copy: Provided, further, that after the year 1907, the publication shall only be of the assessment of personal property and the changes made, if any, in real estate, but the real estate assessment shall be published in full every four (4) years, beginning with the year 1907: Provided, further, that in counties of 125,000 inhabitants or over, no assessment of real estate shall be published as herein provided until such assessment shall have been equalized, revised or affirmed by the board of review, and when the board of review shall have acted upon the assessment list of real property, as herein provided in the year 1907 and every four years thereafter, the assessors and board of review shall cause to be published a full and complete list of such assessment on real property, together with all changes made by the board of review under the authority of this Act, such changes to be indicated in a separate column, such publication to be in pamphlet form by election districts in lieu of publication in a newspaper: And, provided, that the board of review shall cause to be mailed to each taxpayer in said election precinct a copy of the said list for his precinct: Provided, further, that in case said assessment is not published in conformity with law and was not mailed in accordance with the provisions of this Act, the failure to so publish the same or mail the same shall not be considered as a valid objection to a judgment for tax sale in the county court. The expense of such printing and publication shall be paid out of the county treasury. [As amended by an act approved June 21, 1919. L. 1919, p. 725.]

County treasurer may pay expense of publishing assessments lists without previous allowance by county board. *People vs. Fuller*, 223—116, 125 (A. 141 A. 374).

Appointment of—Vacancy—How filled—Compensation—Clerk.]

Section 30. In counties under township organization of less than one hundred twenty-five thousand (125,000) inhabitants there shall be a board of review to review the assessments made by the county supervisor of assessments. The chairman of the board of supervisors shall be ex-officio chairman of the board of review, shall be two (2) additional members of said board of review, who shall be appointed in the manner following: On or before June 1, 1918, the county judge shall appoint one (1) citizen of the county to serve as a member of the board of review of the county for one (1) year from the date of his appointment, and one (1) citizen of the county to serve as a member of the board of review for two (2) years from the date of his appointment. Each year thereafter, on or before the first day of July, the county judge shall appoint one (1) citizen of the county to serve as a member of the board of review for two (2) years from the date of his appointment. Should a member of the board of review die, resign, or be removed, the county judge shall appoint a citizen of the county to fill the unexpired term of such member. The board of review shall at all times consist of two (2) members affiliated with the political party polling the highest vote, and one (1) member of the party polling the second highest vote at the general election in the county prior to the time any appointment is made by virtue of this section. The members of the board of review shall receive as compensation the sum per day for each day of service as shall be fixed by the county board, their time of service to be made out in due form with day and date, and sworn to by the members thereof: Provided, further, that in counties of less than one hundred twenty-five thousand (125,000) inhabitants, the members of the board of review by a majority vote each year may select some suitable person to act as clerk of said board of review, and such clerk shall receive as compensation, the sum per day for each day of service as shall be fixed by the county board. The time of service of such clerk to be made out in due form, with day and date, and sworn to by such clerk. [As amended by act approved April 18, 1919. L. 1919, p. 726.]

Who to constitute the board—Powers of.] Section 31. In counties not under township organization the Board of County Commissioners shall constitute the Board of Review. All powers and duties conferred or required by this act which apply to Board [s] of Review in counties under township organization of less than 125,000

inhabitants shall apply to Boards of Review of counties not under township organization. They shall receive the same compensation as now allowed them by law as county commissioners. The county assessor of such counties shall have the same powers and duties, so far as the same are applicable, as are conferred by this act upon county supervisors of assessments in counties under township organization.

In counties of 125,000—Board of Review of three persons—Election of—Organization and duties of.] Section 32. In counties containing 125,000 or more inhabitants there shall be elected at the regular county election in the year 1898 a Board of Review consisting of three persons, whose term of office shall commence on the first day of January next following and shall be two, four and six years respectively and until their successors shall be elected and shall qualify. At every regular county election occurring thereafter there shall be elected a member of the Board of Review to succeed the one whose term shall expire that year, and whose term of office shall be six years and until his successor shall be elected and shall qualify. The persons so elected shall qualify within ten days after the canvass of the vote shall be completed. They shall hold no other lucrative public office or public employment. Each member before entering upon the duties of his office shall take and subscribe the oath provided for by law. At the first meeting of the Board of Review they shall determine by lot which of the members thereof shall hold office for the respective terms. Each member shall receive as compensation such sum as may be fixed by the county board, to be paid out of the county treasury. In case of any vacancy in said board or the failure of any person elected to that office to qualify, the judge of the county court shall appoint a person to fill such vacancy until his successor shall be elected and shall qualify, the member having the shortest term to serve shall be the chairman of such board.

Form of oath to be taken.] Section 33. Each member of the Board of Review created by this act shall, before entering upon the duties of his office, take and subscribe to the following oath:

I do most solemnly swear (or affirm) that I will, as a member of the Board of Review of assessments, faithfully perform all the duties of said office as required by law; that I will fairly and impartially review the assessment of all property as made; that I will correct any and all assessments which should be corrected; that I will raise said assessment or lower the same as justice may require; that I will do and perform all acts necessary to procure a full, fair and

impartial assessment of all property of every kind, nature and description.

Meeting of Board—Power of.] Section 34. The Board of Review shall meet on or before the third Monday in June in each year for the purpose of revising the assessment of property. At such meeting the Board of Review, upon application of any taxpayer or upon their own motion, may revise the entire assessment or any part thereof of any taxpayer, and correct the same as shall appear to them to be just, but in none of the cases provided for in this act shall the assessment of the property of any person be increased unless such person or his agent, if either be a resident or has a place of business in the county, shall first have been notified in writing and been given an opportunity to be heard. Such meeting may be adjourned from day to day as may be necessary: Provided, that the final adjournment of said Board of Review shall be on or before the seventh day of September and that no per diem compensation shall be paid any member of said board for services rendered after the date fixed for the final adjournment. [As amended by act approved May 18, 1907. In force July 1, 1907. L. 1907, p. 495.

Where the parties actually appeared before the Board of Review, it is unimportant that the statutory notice was not given. While an assessment of property may be impeached for fraud, a mere overvaluation or undervaluation will not, by itself and alone, establish fraud. *People vs. Odin Coal Co.*, 238—279.

In a proceeding under Sec. 230 of Revenue Act, the objection of tax-payer was that this was an original assessment, and notice was not given as provided by Sec. 328 of the Revenue Act. Held, that while notice is not required of an original assessment of personal property by a town assessor, because the statute itself gives notice of the review thereof by the Board of Review, still, notice is necessary in original assessment by Board of Review. *Carney vs. People*, 210—434.

The provision in Sec. 38 of the Revenue Act that Boards of Review shall complete their work on or before the 7th of September is directory, and the board may continue its sessions until it has completed the work then pending before it and sent in the books to the county clerk. Having returned the books, its jurisdiction to act for that year, except in counties of 125,000 or more inhabitants, has ceased. *Barkley vs. Dale*, 213—614; *Kimball & Co. vs. O'Connell*, 263—234.

Powers and duties of Board of Review.] Section 35. The Board of Review shall, in any year, whether the year of the quadrennial assessment or not:

First—Assess all property subject to assessment which shall not have been assessed by the assessor, and list and assess all property real or personal that may have been omitted in the assessment of

any year or number of years, or if the tax thereon, for which such property was liable, from any cause has not been paid, or if any such property, by reason of defective description or assessment thereof shall fail to pay taxes for any year or years, in either case the same, when discovered, shall be listed and assessed by the board in its revision of assessments, and the board may make such alterations in the description of real or personal property as it shall deem necessary.

Second—No such charge for tax of previous years shall be made against any property prior to the date of ownership of the person owning such property at the time the liability for such omitted tax was first ascertained, provided, that an assessment of real or personal property omitted from taxation by a decedent during his life time, shall be made against said property and be assessed in the name of the personal representative as executor, administrator or trustees of such decedent's estate. The owner of real or personal property, and the executor, administrator or trustees of a decedent, whose property may have been omitted in the assessment in any year or number of years, or on which a tax for which such property was liable, has not been paid, and the several taxing bodies interested therein, shall be given at least five days' notice in writing by the board of the hearing on the proposed assessment of such omitted property, and the board shall have full power to examine the owner, or the executor, administrator, trustees, legatees or heirs of such decedent or other person touching the ownership, kind, character, amount and the value of such omitted property or credits.

Third—If the board shall determine that the property of any decedent was omitted from assessment during any year or number of years or that a tax for which such property was liable has not been paid, it shall be the duty of said board to give written notice to the executor, administrator or trustees of such decedent of the assessments made against such property and the amount thereof, and thereupon it shall be the duty of such executor, administrator or trustees to retain in his or their hands sufficient of the assets of such decedent's estate to pay the tax when extended on such assessment and it shall be the duty of the county clerk to file in the County or Probate Court a copy of such assessment together with the rate of taxation thereon, certified by such county clerk and upon the filing of such certificate the County or Probate Court shall enter an order directing such executor, administrator or trustees to deposit with the clerk of the court or to sequester sufficient of the assets of said estate to pay the taxes on said assessments when extended as now provided by law or to enter into bond in double the amount of said

tax with sureties to be approved by the court conditioned for the payment of said tax when so extended, and when so extended by the county clerk the full amount of such tax shall be a claim of the first class against such estate: Provided, however, that an assessment of omitted property by the board of review in the manner provided in this act shall not be subject to review by any succeeding board.

For the purpose of enforcing the provisions of this act, the several taxing bodies interested therein are hereby empowered to employ counsel to appear before said board and take all necessary steps to enforce the assessment on such omitted property.

Fourth—On complaint in writing that any property described in such complaint is incorrectly assessed, the board shall review the assessment, and correct the same, as shall appear to be just. Such complaint to affect the assessment for the current year shall be filed on or before the 1st day of August: Provided, that if the assessment books containing the assessment complained of are not filed with the board of review by the 20th day of July, then such complaint shall be filed on or before ten days thereafter. The board may also, of its own motion, at any time before its revision of the assessments is completed in every year, increase, reduce or otherwise adjust the assessment of any individual or corporation, on real property or personalty, making changes in the valuations thereof as may be just, and shall have full power over the assessment of any individual or corporation, and may do anything in regard thereto that it may deem necessary to make a just assessment; but no assessment shall be increased until the person or corporation to be affected shall have been notified, and given an opportunity to be heard, except as hereinafter provided; and before making any reduction in assessments of its own motion the board of review shall give notice to the board of assessors which certified the assessment, and give such assessors an opportunity to be heard thereon. All complaints of errors, in assessments, real or personal, shall be in writing, and shall be filed by the complaining party with said board of review, in duplicate, and the duplicate shall be forthwith filed by the board of review with the board of assessors certifying such assessment. Complaints relating to real estate shall be classified by towns by the clerk of said board of review, and complaint relating to personal property shall be classified in such manner as the board of review shall determine, by order for that purpose, duly entered of record; all classes of complaints to be docketed numerically, each in its own class, in the order in which they shall be presented, as near as may be, in books kept for that purpose, which books shall always be

open to public inspection. Complaints relating to real estate shall be considered by towns, and complaints relating to personal property shall be heard in their order by classes, in pursuance of the order of the board, heretofore mentioned, until all complaints have been heard and passed upon by the board.

In counties of 125,000 inhabitants or over, in each year, the assessment list of real estate, as made by the board of assessors, shall be prepared in triplicate, and the three complete lists shall be certified by the assessors to the board of review when the assessment required by law is completed by them. In revising assessments in any year the board of review shall note all changes it shall make in the valuations of real estate on all of said assessment lists, and shall duly make return of one complete list to the county clerk, as required by law and one to the Board of Assessors and retain the other. On the books so retained it shall note all changes made by it in the valuation of property after that date, upon the hearings provided for in this act. And in making its annual return each year to the county clerk, and to the assessor, as herein provided, it shall enter all such changes.

In other counties the assessment list of real estate as made by the board of assessors or supervisor of assessments, shall be delivered, when complete, to the board of review; and after the revision thereof has been completed by the board of review, and changes noted thereon, the same shall be duly returned to the county clerk, as required by law.

After making its annual return of the revised assessment to the board of review as required by law, the board of assessors in counties of 125,000 inhabitants, or over, shall have the power, in any year, except the last year preceding each quadrennial assessment, to consider and correct the valuations of real property for the next succeeding annual assessment, in the same manner, upon complaints filed from time to time, and upon complaints filed shall proceed to do so; and such changes as it shall make in any such valuations shall be noted upon the assessment list remaining in its custody, and include the same in its annual return to the county clerk and the board of review. All such changes to be reviewed by the board of review each year as in cases of any assessments.

For the purpose of hearing and determining complaints of errors in the valuation of real property for the next succeeding assessment thereof and correcting the valuations of any such property as shall be just, after its annual return has been made, as herein provided, the board of review shall, on the first Tuesday of November and the first Tuesday of each month thereafter until and

including the first Tuesday of March in each year (except the year last preceeding the quadrennial assessment) and at such other times as it may be necessary, hold public sessions at its board rooms, and continue such sessions from day to day until all complaints and other business have been disposed of. Complaints passed or undisposed of at any session shall be first considered at the next succeeding monthly session, and past complaints shall be disposed of at each session before later complaints shall be considered. Upon any hearing of a complaint, or on proposal for any increase originating with said board where notice is required as herein provided, the said board shall sit together, and hear the representations of the parties interested, or their representatives, and no change shall be made in any assssment of real property unless at least a majority of said board shall concur therein; and in such case an order therefor shall be made in open session, and entered of record on the books of the board: Provided that in counties of less than 125,000 inhabitants monthly sessions of the board of review shall not be required.

Fifth—Increase or reduce the entire assessment of either real or personal property, or both, or of any class included therein if in their opinion, the assessment has not been made upon the proper basis, or equalize the assessment of real or personal property, by increasing or reducing the amount thereof, in any township, or part thereof, or any portion of the county, as may, in their opinion, be just, but the assessment of any class of property, or of any township, or part thereof, or any portion of the county, shall not be increased until the board shall have notified not less than fifty of the owners of property in such township, or part thereof, or portion of the county of such proposed increase and given them, or any one representing them or other citizens of said territory, an opportunity to be heard. The board of assessors shall have like notice of any proposed increase or reduction, with an opportunity to be heard thereon, except where such action is taken in individual cases upon complaint. The board shall hear any person, upon request, in opposition to a proposed reduction in the assessment of any person; corporation or territory.

Sixth—Hear and determine the application of any person who is assessed on property claimed to be exempt from taxation. If the board shall determine that any such property is not liable to taxation and the question as to the liability of such property to taxation has not previously been judicially determined, the decision of said board shall not be final unless approved by the Auditor of

Public Accounts (Tax Commissioner); and it shall be the duty of the clerk of the board in all such cases, under the direction of the board, to make out and forward to the Auditor a full and complete statement of all the facts in the case. If the Auditor is satisfied that such property is not legally liable to taxation he shall notify the board of review of his approval of its decision, and the board shall correct the assessment accordingly. But if the Auditor is satisfied that such property is liable to taxation, he shall advise the board of his objections to its decision, and give notice to said board that he will apply to the Supreme Court, specifying to what term thereof, for an order to set aside and annul the decision of the board of review. Upon receipt of such notice the clerk shall notify the person making the application aforesaid. It shall be the duty of the Auditor to then file in the Supreme Court a certified statement of the facts certified by the clerk as aforesaid, together with his objections thereto, and the court shall hear and determine the matter as the right of the case may be. If the board of review shall decide that property so claimed to be exempt is liable to be taxed, and the party aggrieved at the time shall pray an appeal, a brief statement of the facts in the case shall be made by the clerk, under the direction of the board, and transmitted to the Auditor, who shall present the case to the Supreme Court in like manner as hereinbefore provided. In either case the collection of the tax shall not be delayed thereby, but in case the property is decided to be exempt the tax shall be abated and refunded.

Seventh—They shall, at any time before judgment, if an error or mistake is discovered (other than errors of judgment as to the valuation of any real or personal property), in an assessment of any real or personal property belonging to any person or corporation, issue a certificate setting forth the nature of such error, and the cause or causes which operated to produce such error or mistake, to the person or corporation erroneously assessed, which said certificate, when properly endorsed by the board of assessors, showing their concurrence therein, and not otherwise, may be used in evidence in any court of competent jurisdiction, and when so introduced in evidence such certificate shall become a part of the court records, and shall not be removed from the files except upon the order of the court.

The term "quadrennial assessment," as used in this act shall be taken to mean the general assessment of real estate and improvements required by law to be made once in four years. [As amended by act approved June 23, 1915. L. 1915, p. 566.]

In General:

Assessment of property, in absence of fraud, will not be reviewed by courts.

Paragraph 317, 321, 329, provide sufficient means for the tax-payer to object to unfair valuation and, failing to take advantage of that, he loses his right. *Hulbert vs. P.*, 189—115.

Valuation placed upon property subject to assessment cannot be questioned in County Court where no complaint has been made to boards of assessors or review. *Hulbert vs. P.*, 189—115.

Assessment, revision of, by courts for mere error of judgment, unauthorized. *Lowenthal vs. P.*, 192—228.

Where the Board of Review refuses to act, or where it does act, but acts in a manner so gross an abuse of discretion and such an evasion of positive duty as to amount to a virtual refusal to perform the duty, mandamus will lie; as where the board, advised of the unassailability of its determination of valuation, ratifies an assessment because it does not believe it has authority to act anyway. *P. vs. Comrs. of Cook Co.*, 176—586; *P. vs. Webb*, 256—377.

New board at first meeting shall do nothing more than organize, and determine by lot terms during which its members shall hold office. *P. vs. Board of Review*, 178—349.

Review of assessments should begin in July following. *P. vs. Board of Review*, 178—349.

Review of assessments made in 1898 cannot be made at January meeting in 1899. *P. vs. Board of Review*, 178—350.

New Act took away from local assessor and gave assessment of omitted property to Board of Review, but modification of section above by law of 1898 does not apply to State Board of Equalization. *State Board of Equalization vs. P.*, 191—542; *People vs. Webb*, 256—364, 376.

A Board of Review has no authority to punish one who refuses to say to whom notes were assigned by him, by raising his assessment to cover them. *Condit vs. Widmayer*, 196—623.

Except where some restriction appears in act, this section applies to all counties in the State. *People (ex rel.) vs. St. Louis Bridge Co.*, 281—462.

Clause 1:

Since the passage of the Review Act of 1898, the Board of Review is the only body that has power to assess property omitted in former years. By this section the duty of the board is to "assess all property subject to assessment which shall not have been assessed by the assessors." *Stevens vs. Henry County*, 218—468; *P. vs. Webb*, 256—376.

Where a property owner has not been assessed on credits at all, the Board of Review may in subsequent years assess credits the party owned, but which were omitted from the assessment, but where credits were assessed, and taxes paid, even though assessed too low or some items omitted, the board has no authority to increase; on the theory that credits are assessed as one item and not as separate items. The theory here was that credits were not separable into different items, like tangible property, but must be assessed as one item and deductions made, and having been once assessed, the board cannot later seek to thresh the matter over again. *Warner vs. Campbell*, 238—630.

Assessors, since Act of 1898, have no power to assess property omitted in former

years, as that changed Sec. 276 of old law. *P. vs. Sellers*, 179—175; *Sellars vs. Barrett*, 185—472.

Credits are personal property, within meaning of section above. *Sellars vs. Barrett*, 185—472.

Board of Review must assess capital stock of manufacturing corporation omitted in previous year, and notice of assessment of omitted property must be given by board which it was duty of assessor to give prior to Act of 1898. *People (ex rel.) vs. National Box Co.*, 248—141.

Section is not invalid for failing to provide for notice since Board of Review has power under Secs. 276 and 278 of act to give notice. *People vs. Shirk*, 252—95, 97.

Board of Review may properly make an original assessment of omitted property in the same manner and subject to the same requirements as to notice that the assessor might make under Secs. 276 and 278. *People vs. Shirk*, 252—95.

Mandamus will lie to compel Board of Review to list and assess omitted property. *People (ex rel.) vs. Webb*, 256—364.

Clause 4:

A tax-payer who has failed to file a schedule, and as to whose property the board of assessors made a valuation plus 50 per cent penalty, may go to the Board of Review to have such valuation corrected, but the Board of Review must add the 50 per cent penalty to the corrected valuation, and has no power to remove the penalty. *People vs. Meachem*, 241—415.

One who is in possession of and occupying premises, and claims to be owner, is entitled to notice of reassessment of property by the Board of Review, and to object to the tax, and where it is sought to enforce such a tax, may defend without having paid the amount legally due. *People vs. Gas Co.*, 238—113; *People vs. Bridge Co.*, 268—481.

Where the Board of Review has passed upon assessment of credits and turned in the books, it cannot at a later time assess omitted credits, notwithstanding it had, before turning in the books, notified the property owner to appear before the board for purposes of assessment. *Barkley vs. Dale*, 213—614; *Kimball & Co. vs. O'Connell*, 263—234.

The court has no power to revise the assessment of the Board of Review as to values, though it may as to ownership of property. *Carney vs. People*, 210—434.

The Board of Review has authority to assess property, but no authority to levy or extend taxes. While a void or illegal tax voluntarily paid cannot be recovered, still, where money was paid at the command of the Board of Review, where no tax was extended, it was not paid for any tax valid or invalid, and might be recovered. *Gannaway vs. Barrieklow*, 203—410.

Provides that the Board of Review shall have full power over the assessment and may do anything in regard thereto that the assessors might have done. It could, therefore, transfer property for taxation from the lists of one township to those of another, and no notice thereof is required. *Ellis vs. People*, 199—548.

The Board of Review has no power to increase an assessment where the schedule was accepted as correct by the assessor, without notice to the owner. *Cox vs. Hawkins*, 199—68.

Remedy where Board of Review refuses to review assessment is by mandamus.

Loewenthal vs. P., 192—229; People vs. Webb, 256—364.

Assessment record should show increased valuations of different kinds of property as made by Board of Review and not merely assessed valuation. But this not ground for adjoining collection of tax. American Express Co. vs. Raymond, 189—233.

Evidence upon which Board of Review acted need not be produced at hearing, as where tax was raised by the board after due notice, though no formal hearing was had, but merely an informal conversation between the members of the board and complainant's agent. American Express Co. vs. Raymond, 189—233.

Original assessment by Board of Review is authorized after notice to owner. Pratt vs. Raymond, 188—471.

Hearing is legal if board acted upon complaint, though it was not made within time appointed by statute, if heard while board acting. Ayers vs. Widmayer, 188—125.

Unsworn information not disclosed to tax-payer will support valid increase, for board is not only merely bound to act on evidence, like a jury. Earl vs. Raymond, 188—18.

Presumption is that Board of Review has exercised, in fair and reasonable way, the judgment and discretion conferred upon it. Burton Stock Car Co. vs. Traeger, 187—15.

Complaint, hearing, review and action by board purges valuation of mistake or fraud by board of assessors. Burton Stock Car Co. vs. Traeger, 187—16.

A person charged with a tax on property he does not own may enjoin collection of tax and is not limited to a remedy before the Board of Review. Moline Water Power Co. vs. Cox, 252—348.

It is the policy of our law that the whole matter of the valuation of property for taxation shall be committed to the control of the assessing authorities of the respective counties, and that a party aggrieved by an excessive valuation fraudulently or otherwise should apply to the Board of Review for a correction of the assessment. It is true equity will enjoin collection of a tax on the ground of over-valuation, but complainant must allege and prove diligence in seeking to have such over-valuation corrected and prove over-valuation was made from some corrupt or illegal motive as to amount to constructive fraud. Sanitary Dist. vs. Young, 285—350.

Where the assessor makes an assessment in disregard of schedules returned showing that corporation has no personal property in certain taxing district, the corporation is not required to bring the matter before the Board of Review before pursuing its remedy by injunction. Sanitary Dist. vs. Young, 285—351.

Board of Review in making an assessment, is required to proceed as an assessor would, setting down in the column opposite the separate kinds of property the assessed value thereof, the board cannot make an assessment of personal property in a lump sum, without any designation as to character or kind of same. P. vs. Grant, 271—523; Holt vs. Hendee, 248—288.

Board of Review is not required to enter value of the lands and lots and the improvements in separate columns, as required of the township assessor by Sec. 14. People (ex rel.) vs. St. Louis Bridge Co., 281—462.

Board of Review has power in any year, upon due notice to party to be assessed to change assessment of real property as made in quadrennial year when it does not represent valuation of property assessed although there is no change in the property. *People (ex rel.) vs. St. Louis Bridge Co.*, 281—462; same *vs. Same*, 282—408.

Valuation fixed by board of assessors for quadrennial period cannot be increased by Board of Review without notice to the owners, where there has been no improvements on the land. *People vs. Casey*, 286—89.

Clause 6:

Under Sec. 26 of Tax Commission Law, *supra*, powers and duties conferred upon Auditor of Public Account in relation to assessment of property for taxation to be exercised by Tax Commission.

In reviewing the decision of the Board of Review, the Supreme Court may consider only whether the property was liable to taxation; the burden is on one seeking to impeach the regularity of assessment, to show irregularity or illegality. *In re Appeal of Maplewood Coal Company*, 213—283.

Where the board strikes out the tax, but fails to certify it up, the county clerk has no authority to extend the omitted tax, and mandamus does not lie against him to do so. The writ should issue against the board to certify the facts to the Auditor. *People vs. Opel*, 207—469.

The right of appeal is limited to the consideration of the question whether the Board of Review has decided that exempt property be taxed. *Appeal of Wilmerton*, 206—15.

The right of appeal from the decision of a Board of Review is restricted to cases in which it is claimed the property assessed is exempt from taxation. To raise the question, the appellant must so frame the record as to make it appear upon what property said increased assessment was based. *Havemeyer vs. Board of Review*, 202—446.

“Exempt,” in clause 4 above, applies to property not subject to taxation because not in this State. The duty to appeal to Supreme Court is on the Auditor, not on the tax-payer. The remedy is cumulative, not exclusive. *Maxwell vs. P.*, 189—552.

Appeal from decision of Board of Review is restricted to cases in which it is claimed that property is exempt from, and board decides that it is liable to, taxation. *Dutton vs. Board of Review*, 188—389.

“Exempt,” as employed in clause 4 above, refers to property not within sovereign power of State to tax. *Dutton vs. Board of Review*, 188—389.

Revenue Act denies by implication the right to appeal on other questions. *Keokuk Bridge Co. vs. P.*, 185—279.

Duty of clerk of Board of Review, upon receiving notice that Auditor of Public Accounts will apply to Supreme Court to annul board's decision exempting property to notify petitioning property owner such application will be made. *In re Logan Square Pres. Church*, 246—168.

Right of appeal from decision of Board of Review is limited to cases in which it is claimed that property assessed is exempt, and the claim that property of a sanitary district which was assessed as real estate should have been assessed as personal estate does not involve question of exemption. *Sanitary Dist. vs. Board of Review*, 258—316.

Where it is claimed assessment is so grossly excessive as to amount to fraud, the remedy is by injunction and the question cannot be considered upon

Auditor's certificate of appeal to review decision of board. Sanitary Dist. vs. Board of Review, 258—316.

Where the Supreme Court is of the opinion property is not subject to taxation the decision of the Board of Review will be set aside and annulled. Petition of City of Robinson, 281—429.

The only question that can be raised in the Supreme Court on appeal from a decision of the Board of Review assessing certain property for taxation is whether the property is subject to taxation and if subject to taxation the regularity of the assessment cannot be inquired into. Simmons Coal Co. vs. Board of Review, 282—396.

Clause 7:

Mandamus lies to compel reconvening of Board of Review after September 7th, in order that it may perform omitted duty. Even after delivered books to county clerk. Here, it was a county containing 125,000 people or more. Locwenthal vs. P., 192—232.

Notices under this act—How Given.] Section 36. All notices in this act required to be given shall be written or printed notices and shall be served personally upon the persons entitled to notice, or their agents, or by sending such notice by mail to the person so entitled to notice, or to his agent, if the residence or business address of such person is known, or by reasonable effort can be ascertained. If the address of such person can not be ascertained, then the notice shall be sent to the address of the person who last paid the taxes upon the property in question. A failure to give any notice required by this act shall not impair or affect the validity of any assessment as finally made.

Board of review—When and how changes made upon assessment books.] Section 37. Whenever the board of review shall decide to reverse or modify the action of the supervisor of assessments or board of assessors, or county assessor, or the assessment in any case, or to change the list as completed, or the assessment or description of any property in any manner, they shall cause the changes to be made at once and entered upon the assessment books. The record of the decision of board upon a hearing for the purpose of modifying an assessment is made by entering it upon the assessment books, and that which the board decided to do must be determined by the record made by it. People vs. Chicago Tunnel Co., 263—253.

When the Board of Review makes a change in an assessment, it is its duty to make a corresponding change in the assessment books and to show the reason, as by revaluation, or by listing, classifying and valuing property claimed to be owned by tax-payer, but omitted; and it is presumed that this was done in absence of showing to contrary. Weber vs. Baird, 208—209.

If the assessment books fail to show the action of the Board of Review, or where property was omitted, the kind and class, and such records are not cured, the assessment is invalid. Weber vs. Baird, 208—209.

Where board reduces on books an assessment of real estate from six million dollars to four million dollars, oral testimony is not admissible to show that members of the board intended to reduce the assessment to three million dollars and testimony that president of board on hearing complaint of overvaluation stated assessment would be reduced does not show fraud, accident or mistake. *People vs. Chicago Tunnel Co.*, 263—253.

Form of affidavit to be attached to each of the assessment books.] Section 38. The board of review shall, on or before the seventh day of September annually, complete its work and make or cause to be made the entries in the assessment books required to make the assessment conform to the changes made therein by the board of review, and shall attach to each of said books an affidavit signed by at least two members of such board, which affidavit shall be substantially in the following form:

STATE OF ILLINOIS, }
County of..... } ss.

We, and each of us, as a member of the board of review of the assessment of the county of....., in the State of Illinois, do solemnly swear that the books.....in number....., to which this affidavit is attached, contain a full and complete list of all the real and personal property in said county subject to taxation for the year....., so far as we have been able to ascertain the same, and that the assessed value set down in the proper column opposite the several kinds and descriptions of property is, in our opinion, a just and equal assessment of such property for purposes of taxation according to law, and that the footings of the several columns in said book are correct, as we verily believe.

Dated.....

Provided, that in counties containing one hundred and twenty-five thousand or more inhabitants the board of review shall also meet from time to time and whenever necessary to consider and act upon complaints and to further revise the assessment of real property as may be just and necessary. [As amended by act approved May 18, 1907. In force July 1, 1907; L. 1907, p. 495.

The provisions of this section that boards of review shall complete their work on or before the 7th of September, annually, in view of Sec. 40, is so far directory that the board may continue its sessions until it has completed the work then pending and is prepared to return books to county clerk. *Barkely vs. Dale*, 213—614; *Kimball & Co. vs. O'Connell*, 263—234.

Rules and regulations.] Section 39. The board of assessors and the boards of review shall make and publish reasonable and proper rules for the guidance of persons doing business with such board and for the orderly dispatch of business.

Failure to complete assessment in time—Not to vitiate.] Section 40. A failure to complete an assessment in the time required by law shall not vitiate such assessment, but the same shall be as legal and valid as if completed in the time required by law.

Board of review—When to enter upon its duties.] Section 41. The township supervisors, township assessors and township clerks who have heretofore acted as the town boards of review in their respective townships and the county boards shall not hereafter have the power as such boards of review to assess, equalize, review or revise the assessment of property. The boards of review herein provided for shall meet as soon after the taking effect of this act as shall be practicable, not later than the third Monday in June, and shall thereupon at once enter upon the discharge of their duties. [As amended by act approved May 18, 1907. In force July 1, 1907; L. 1907, p. 495.

See. 335 of Revenue Act, in taking away the power of the county board of Cook County to review, does not violate Sec. 1, Art. 9, of Constitution, as that provides for no Boards of Review. They are mere creatures of statute to arrive at "valuation." The provision does not violate the constitutional rule of uniformity. *P. vs. Comrs. of Cook Co.*, 176—576-587.

The provision that the county boards shall not "hereafter" have power of a Board of Review, means from the time the act was to take effect, and not merely when the new board came into being. *P. vs. Comrs. of Cook County*, 176—586.

Board of review may examine assessor as to how assessment was made.] Section 42. It shall be lawful for the board of review to summon any assessor or any deputy or other person to appear before them respectively to be inquired of under oath with respect to the method by which he or they has or have ascertained and fixed any valuation or valuations returned by him or them, and as to the correctness of any such valuation or valuations, and to administer and examine under oath the assessor or other person so summoned before them, and any assessor or person so summoned who shall fail, without good cause, to appear or appearing shall refuse to submit to such inquiry or answer such questions as may be propounded to him by said board, or any member thereof, or any attorney representing them, shall be guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding five hundred dollars.

Delivery of books containing assessments.] Section 43. When the books are so completed the board of review shall deliver one set of the books containing the assessment of real property and the books containing the assessment of personal property to the county

clerk, who shall file the same in his office; one set of the books containing the assessment of real property shall be returned to the board of assessors, or supervisor of assessments; and when triplicate sets of books are required by this act, the remaining set of books containing such assessment shall remain in the office of the board of review. All such books shall be public records and open to the inspection of all persons. The assessment so completed by the board of review and certified to the county clerk and as equalized as provided by law, shall be the assessment upon which the taxes of that year shall be extended by the county clerk. [As amended by act approved May 18, 1905. In force July 1, 1905. L. 1905, p. 360.]

Conniving at any evasion of this act—Penalty.] Section 44. Any assessor, or deputy assessor, or member of the board of review of assessments, or board of equalization, or other person whose duty it is to assess property for taxation or equalize any such assessment, who shall refuse or wilfully neglect any duty required of him by law, or who shall consent to or connive at any evasion of the provisions of this act whereby any property required to be assessed shall be unlawfully exempt in whole or in part, or the valuation thereof be set down at more or less than is required by law, shall, upon conviction, be fined for each offense not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000) or imprisoned in the county jail not exceeding one year, or both imprisoned and fined at the discretion of the court; he shall also be liable upon his bond to the party injured for all damage sustained by such party as above provided, and shall also be removed from office by the judge of the court before whom he is tried and convicted.

Delivering false or fraudulent lists to assessor—Penalty.] Section 45. Whoever, with intent to defeat or evade the law in relation to the assessment of property, delivers or discloses to any assessor or deputy assessor a false or fraudulent list, return or schedule of his property not exempted by law from taxation, shall be punished by fine not exceeding five thousand dollars (\$5,000) or imprisoned in the county jail not exceeding one year, or both in the discretion of the court.

Duty of state's attorney to prosecute violators—Fees—Payment of salary of county assessors, etc.] Section 46. It is hereby made the duty of the state's attorney of each county to prosecute all violators of this act, and they shall receive as fees the sum of twenty dollars (\$20) for each conviction, to be taxed as costs, and

ten per cent of all fines collected. The residue of all fines collected under this act shall be paid into the county treasurer for the use of the county. The salary of the county assessor, supervisor of assessments, and members of the board of assessors and board of review shall all be paid out of the county treasury on bills duly certified and approved by the county board.

Abstract of the assessment to be sent to auditor.] Section 47. The county clerk shall annually, on or before the tenth day of September, make out and transmit to the auditor [Tax Commissioner] the abstract of the assessment of property required of the county clerk in Section ninety-eight (98) of the act entitled, "An act for the assessment of property and for the levy and collection of taxes," approved March 30, 1872, as amended.

Under Sec. 27 of Tax Commission Law, *supra*, whenever any abstracts, reports, etc., are required to be filed with, or any duty imposed upon or power vested in the Auditor of Public Accounts such abstracts, etc., to be filed with Tax Commission.

County collector—Duplicate delinquent lists—When to be made and where to be filed.] Section 48. The county collector shall annually made out in duplicate the statement required by law, setting forth in detail the names of persons charged with personal property tax which is uncollected, and the reasons preventing such collection, and shall, also, at the same time, make out in duplicate a statement setting forth in detail the amount of taxes on real property which is uncollected, the names of the persons in whose name such property was listed, and the reasons preventing the collection of such taxes. He shall, also, at the same time, made out in duplicate a statement of all taxes collected during the year which has been returned as delinquent in any previous year, together with a description of the property upon which such taxes were levied. He shall file one of each of such duplicate statements with the county clerk and in counties of this State containing 125,000 or more inhabitants such collector shall file one of each of such duplicate statements with the county clerk and the other with the city comptroller if there shall be any such officer in any of the cities within such counties.

The rate per cent—How to be Determined.] Section 49. The county clerk shall estimate and determine the rate per cent upon the proper valuation of the property in the respective towns, townships, districts and incorporated cities, towns and villages in their counties, that will produce, within the proper divisions of such counties, not less than the net amount of the several sums that

shall be required by the county board or certified to them according to law.

In counties containing one hundred and twenty-five thousand (125,000) or more inhabitants the amount to which any county, city, township, school district or other municipal corporation shall be allowed to become indebted in any manner or for any purpose, shall not hereafter exceed two and one-half per cent. on the assessed value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness. In any municipality or taxing district in any county or counties containing a population of 125,000 or more inhabitants in which the aggregate of the levies or taxes certified to the county clerk exceeds five per cent. a reduction shall be made by the county clerk in the taxes so certified, so as to reduce the aggregate of such taxes to five per cent. in the manner following, viz.:

The rate of county taxes throughout the county shall be fixed by reducing the aggregate rate of taxation in the municipality or taxing district within the county in which such aggregate rate is the highest to five per cent. by a pro rata reduction of all the levies certified therein, exclusive of the state taxes. The rate of each of the other kinds of tax levies shall be fixed in the same manner, taking the highest rate of taxation in any part of the municipality or other taxing district, or part thereof, as the basis of ascertaining the rate of taxation to be levied by such municipality or taxing district, and making the rate of taxation within the limits thereof uniform, and reducing the aggregate rate of taxation in each district in which it exceeds five per cent. to five per cent.

In ascertaining the aggregate rate of taxation, and reducing the same under the foregoing provision, taxes certified or levied for school building purposes shall not be included or taken into account in any manner, or for any purpose. The limitations herein contained shall apply only to assessments of property made under the provisions of this act.

Section held unconstitutional, because could not single out Cook County, as that would be special law. The Act here in terms applied to Cook County alone. The Juhl law *infra* now enacted to take its place. *Knopf vs. P.*, 185—25.

Repealed.] Section 50. [Repealed by act approved June 19, 1919. In force July 1, 1919. L. 1919, p. 718.

Repealed.] Section 51. [Repealed by act approved June 19, 1919. In force July 1, 1919. L. 1919, p. 718.

Secs. 50 and 51 repealed by Sec. 29 of an Act in relation to assessment of property for taxation and by Sec. 25 of that act all powers and duties now conferred or imposed upon the State Board of Equalization were transferred to the State Tax Commission. [Laws 1919, P. 718.]

When books for the collection of taxes to be delivered to collector.] Section 52. The county clerk shall hereafter deliver to the town, district or county collectors the books for the collection of taxes on the second day of January following the year on which such taxes are levied. [As amended by act approved May 13, 1907. In force July 1, 1907. L. 1907, p. 500.]

A number of dates for the performance of acts under the general revenue law changed.] Section 53. All lists, schedules, returns and statements heretofore required by law to be made between the first day of May and the first day of July by the assessors or by the owner of property, or person required to list the same, shall hereafter be made between the first day of April and the first day of June of each year.

The owner of personal property removing from one county, town, city, village or district to another between the first day of April and the first day of June shall be assessed in either in which he is first called upon by the assessor. The owner of personal property moving into this state from another state between the first day of April and the first day of June shall list the property owned by him on the first day of April in such year in the county, town, city, village or district in which he resides. Provided, if such person has been and can make it appear to the assessor that he is held for tax of the current year on the property in another State, county, town, city, village or district [he] shall not be again assessed for said year.

All dates and times for the doing or performing of any act or thing which prior to the taking effect of this act were fixed by law with reference to the assessment of taxes between the first day of May and the first day of July, or the State Board of Equalization meeting, on the second Tuesday of August, or the collector's warrants being returned to the collectors on the 20th day of December are respectively changed so that such acts or things shall be done or performed in the manner required by law with reference to the respective dates fixed by this act for the assessment of taxes, meeting of the state board of equalization, or the delivery of the collector's warrants to the collector.

Taxes upon real property with penalties, interest and costs, that shall accrue thereon, shall be a prior and first lien on such real property from and including the first day of April in the year in

which the taxes are levied instead of the first day of May as heretofore with all the rights and incidents relating to such lien, which now are or hereafter may be provided by law: Provided, nothing in this section contained shall change or affect any rights or liabilities under any contract entered into before the taking effect of this act.

The abstracts which the auditor prior to the taking effect of this act was required by law to obtain on the first day of May from the United States land office in this state of lands entered and located, and from the Illinois Central Railroad and canal offices of lands sold shall hereafter be obtained by him on the first day of April in each year, or as soon thereafter as practicable, and the annual reports heretofore required by law to be made by the county clerk to the auditor, of swamp and overflow lands sold for the year ending on the first day of May shall hereafter be made for the year ending on the first day of April.

Board of assessors—Duties and powers of—Penalties.] Section 54. The board of assessors shall perform the duties and have the powers in relation to the assessment of property imposed upon or possessed by county or township assessors by law, and where the term assessor is used in this act it shall apply to such board of assessors and the members thereof, except in so far and in such cases as it is inconsistent with special provisions of this act in regard to the board of assessors and the members thereof, and the members of such board of assessors shall be subject to all the liabilities and penalties imposed upon assessors by this act.

Provisions of the general revenue act applicable—To remain in force.] Section 55. All the provisions of the general revenue law in force prior to the taking effect of this act shall remain in force and be applicable to the assessment of property and collection of taxes except in so far as by this act is otherwise expressly provided.

The effect of section is to keep in force the provisions of the general Revenue Act except where the Act of 1898 made a different provision. People vs. Fisher, 274—116.

Majority of board may act.] Section 56. Wherever, in this act, the board of assessors or the board of review is authorized to act, such action may be taken by a majority of said respective boards.

In counties of 125,00 or over—Power of township assessor.] Section 57. In counties of one hundred and twenty-five thousand inhabitants or over the township assessors shall not have the power

or duty of assessing property, except as otherwise provided in this act, but shall perform all other duties imposed upon them by law.

Provision in case any county shall hereafter come under the provisions of this act.] Section 58. In case any county not now coming under the provisions of this act shall hereafter contain within its limits one hundred and twenty-five thousand or more inhabitants, as determined by the last school or federal census, such county shall at once come under the provisions of this act relating to counties of such population, and at the regular county election ensuing next after such contingency occurs, a board of five assessors and a board of review shall be elected, and all the provisions of this act shall then immediately apply to such county.

Repeal.] Section 59. An act entitled "An act to provide for the election of assessors in townships containing not less than forty thousand inhabitants in counties under township organization and fixing the compensation of such assessors," approved June 19, 1893, and in force July 1, 1893, and as amended, be, and the same is hereby repealed.

JUHL LAW

AN ACT concerning the levy and extension of taxes. [Approved May 9, 1901. In force July 1, 1901. L. 1901, p. 272.]

Amount of tax authorized to be levied.] Section 1. Be it enacted by the People of the State of Illinois represented in the General Assembly: That in determining the amount of the maximum tax authorized to be levied by any statute of this state the assessed valuation of the current year of the property in each taxing district, as equalized by the State Board of Equalization (Tax Commission), shall be used. And if the amount of any tax certified to the county clerk for extension shall exceed the maximum allowed by law, determined as above provided, such excess shall be disregarded, and the residue only treated as the amount certified for extension. The act is valid. Booth vs. Opel, 244—317; People vs. Chicago & A. R. Co., 247—458; People vs. Chicago & W. Ind. R. Co., 256—388.

[The amendments of 1909 change the limits of fixing the amounts of taxation. Therefore, the following cases, which deal with the mode of arriving at the amount to be assessed, are still applicable:]

The Juhl law, being an amendment of those sections (117 and 118) of the revenue law, is constitutional. Under it, all taxes up to the limit provided by law must be extended upon the equalized valuation made by the State Board. R. R. Co. vs. P., 213—458.

The proper mode of fixing the cents on the \$100 to be taxed under those sections (117 and 118, Laws 1901, p. 272) is to compute the amount of tax that could be raised at the rate of 75 cents on the hundred dollars on the basis of the equalized value as fixed by the State Board of Equalization.

Having that, the rate percentum against each \$100, as equalized by the county Board of Review, and the property originally assessed by the State Board of equalization, is ascertained by dividing the maximum amount of money that could be raised by the total valuation of the property of the county as equalized by the county Board of Review and the corporate property that was assessed by the State Board of Equalization. It was error, however, to extend this against the valuation fixed by the State Board of Equalization. *Ry. Co. vs. People*, 223—17.

Where the levy equals the maximum rate allowed by law, the amount that can be lawfully extended is to be ascertained by computing the tax at the rate determined upon on the basis of the equalized value of the property as fixed by the State Board of Equalization. Then, for all taxes other than State taxes, the rate percentum against each \$100 is to be ascertained by dividing the amount of taxes that it has been ascertained can be lawfully extended by the valuation of property as fixed by the county Board of Review. In extending the road and bridge tax, therefore, the use of the county board valuation, instead of the State Board of Equalization valuation, was error. *R. R. Co. vs. People*, 225—418.

A tax levied by the county at a rate higher than that computed to produce the amount extended by the Board of Equalization or the county Board of Review valuation, is invalid. *Ry. Co. vs. People*, 225—463.

Levy and extension of taxes.] Section 2¹. The county clerk in each county shall ascertain the rates per cent. required to be extended upon the assessed valuation of the taxable property in the respective towns, townships, districts, incorporated cities and villages in his county, as equalized by the State Board of Equalization (Tax Commission) for the current year, to produce the several amounts certified for extension by the taxing authorities in said county (as the same shall have been reduced as hereinbefore provided in all cases where the original amounts exceed the amount authorized by law): Provided, however, that if the aggregate of all taxes (exclusive of State taxes, township taxes, village taxes, levee taxes, public tuberculosis sanitarium taxes, pension fund taxes, school building taxes, high school taxes, district school taxes and all other school taxes in school districts having not more than 100,000 inhabitants, road and bridge taxes, and taxes levied for the payment of the principal of and the interest on bonded indebtedness of cities, and for the payment of the principal of and the interest on park bonds hereafter issued, and exclusive of taxes levied pursuant to the mandate or judgment of any court of record on any bonded indebtedness), certified to be extended against any property in any part of any taxing district or municipality, shall exceed two per cent of the assessed valuation thereof upon which the taxes are required to be extended, the rate per cent of the tax levy of such taxing district or municipality shall be reduced as follows: The county clerk shall reduce the rate per cent. of the

tax levy of such taxing district or municipality in the same proportion in which it would be necessary to reduce the highest aggregate per cent. of all the tax levies (exclusive of State taxes township taxes, village taxes, levee taxes, public tuberculosis sanitarium taxes, pension fund taxes, school building taxes, high school taxes, district school taxes and all other school taxes in school districts having not more than 100,000 inhabitants, road and bridge taxes, and taxes levied for the payment of the principal of and the interest on bonded indebtedness of cities, and for the payment of the principal of and the interest on park bonds hereafter issued, and exclusive of taxes pursuant to the mandate or judgment of any court of record on any bonded indebtedness), certified for extension upon any of the taxable property in said taxing district or municipality, to bring the same down to two per cent. of the assessed value of said taxable property upon which said taxes are required by law to be extended: Provided, further, that in reducing tax levies hereunder from the taking effect of this Act to and including the year A. D. 1921 the rate per cent. of the tax levy for county purposes in counties having a population of over 300,000 shall not be reduced below a rate of thirty-six and two-third cents on each one hundred dollars assessed value (exclusive of levies to pay the principal of and interest on bonded indebtedness and judgments and Mothers' Pension Fund), and thereafter shall not be reduced below a rate of thirty cents on each one hundred dollars assessed value (exclusive of levies to pay the principal and interest on bonded indebtedness, judgments and Mothers' Pension Fund), and in counties having a population of less than 300,000 the rate of the tax levy for county purposes shall not be reduced below a rate of fifty cents on each one hundred dollars assessed value (exclusive of levies to pay the principal of and interest on bonded indebtedness and judgments), and the rate per cent. of the tax levy for city or village purposes (exclusive of library, public tuberculosis sanitarium, pension fund, school and park purposes and exclusive of the taxes levied for the payment of the principal of and the interest on bonded indebtedness in cities and villages having a population of over 150,000 shall not be reduced below a rate of one dollar and forty-three and one-third cents ($\$1.43\frac{1}{3}$) on each one hundred dollars assessed value, and the rate per cent. of the school tax for educational purposes shall not be reduced below a rate of one dollar and twenty cents on each one hundred dollars assessed value, and the rate per cent. of the tax levy for library purposes shall not be reduced below a rate of five and one-third cents on each one hun-

dred dollars assessed value, and the rate per cent. of the tax levy for city or village purposes (exclusive of library, school and park purposes, and exclusive of the taxes levied for the payment of the principal of and the interest on bonded indebtedness and judgments) in cities and villages having a population of less than 150,000, shall not be reduced below a rate of one dollar and thirty-three and one-third cents ($\$1.33\frac{1}{3}$) on each one hundred dollars assessed value, and the rate per cent. of the school tax levy for educational purposes shall not be reduced below the maximum rate allowed by law and the rate per cent. of the tax levy for park purposes in districts organized and existing under an Act entitled "An Act to provide for the creation of pleasure driveway and park districts," approved June 19, 1893, in force July 1, 1893, shall not be reduced below a rate of forty cents on each one hundred dollars assessed value (exclusive of levies to pay the principal and interest on bonded indebtedness and judgments), but the other taxes which are subject to reduction under this section shall be subject only to such reduction, respectively, as would be made therein under this section if this proviso were not inserted herein: And, provided, further, in reducing tax levies hereunder, all school taxes levied in cities exceeding 150,000 inhabitants, with the exception of the levy for school building purposes, shall be included in the taxes to be reduced.

The rate per cent. of the tax levy of every county, city, village, town, township, park district, sanitary district, road district, and other public authorities (except the State), shall be ascertained and determined (and reduced when necessary as above provided) in the manner hereinbefore specified, and shall then be extended by the county clerk upon the assessed value of the property subject thereto (being one-half of the full value thereof) as equalized according to law. In reducing the rate per cent. of any tax levy as hereinbefore provided, the rates per cent. of all tax levies certified to the county clerk for extension as originally ascertained and determined under section 1 of this Act, shall be used in ascertaining the aggregate of all taxes certified to be expended without regard to any reduction made therein under this section: Provided, that no reduction of any tax levy made hereunder shall diminish any amount appropriated by corporate or taxing authorities for the payment of the principal or interest on bonded debt, or levied pursuant to the mandate or judgment of any court of record. And to that end every such taxing body shall certify to the county clerk, with its tax levy, the amount thereof required for any such purposes.

In case of a reduction hereunder any taxing body whose levy is affected thereby and whose appropriations are required by law to be itemized, may, after the same have been ascertained, distribute the amount of such reduction among the items of its appropriations, with the exceptions aforesaid, as it may elect. If no such election is made within three months after the extension of such tax, all such items, except as above specified, shall be deemed to be reduced pro rata. [As amended by act approved June 30, 1919. L. 1919, p. 772.]

1. Method of reducing rate:

Where aggregate tax rates, exclusive of the levies for state, village levee, school building, high school and road and bridge purposes and for the payment of bonded indebtedness, is higher in a certain city than in any other taxing district in that county the county clerk must reduce the county tax, city tax and town tax in the same proportion as is necessary to reduce the said aggregate rate to three per cent on the \$100, but if such reduction brings the county and city tax below the minimum rate fixed by law the minimum rate must be used. *People vs. Chicago & E. Ill. R. Co.*, 248—596.

Taxing district having highest aggregate of rates, exclusive of rates mentioned in act as not subject to reduction, is taxing district to be used as standard in determining tax reduction. *People vs. Chicago & Alton R. Co.*, 248—87, 90; *Same vs. Ry. Co.*, 249—142.

Taxing district within amended Revenue law of 1909 is municipality which levies tax to be scaled. *People vs. Chicago & A. R. Co.*, 247—458, 460.

Sec. 1, Art. 8 of the Cities and Villages Act fixing maximum rate of \$1.20 on each \$100 is not repealed by provision of act for scaling taxes and if amount required by city, including amount needed to pay judgments not for bonded indebtedness or interest thereon, exceeds what will be produced by rate of \$1.20 on each \$100 of taxable property, exclusive of bonded indebtedness and interest, the provision that no reduction of any tax levy shall diminish the amount levied pursuant to any mandate or judgment of the court, requires that the amounts required for other purposes shall be reduced accordingly. *People vs. R. Co.*, 270—477.

In making reduction of Cook County taxes, the taxes for road and bridges for parents' pension fund and for loss and cost of collection of the general fund must be included in minimum rate of forty-five cents, but taxes for bonds and judgment and interest and for actual loss and cost of collection of same is not included in said limit. *People vs. Klee*, 282—440.

2. Taxes included in aggregate before scaling:

An additional county tax levied pursuant to vote of the people for erecting an addition to the county hospital and for small building at county farm for consumptive patients is not exempt from scaling process. *People vs. St. Louis Bridge Co.*, 261—103.

If the total taxes subject to reductions will not exceed three per cent. of the taxable property, provided a certain void city tax is excluded there is no violation of the statute in respect to rates. *People vs. Cairo V. & C. R. Co.*, 248—36.

Sanitary district tax not necessarily exempt from reduction as a levee tax.

People vs. Chicago & Alton R. Co., 248—417.

Tax of any sanitary district is subject to reduction. People vs. R. Co., 248—417; People vs. R. Co., 249—175.

The county road and bridge taxes are subject to reduction. People vs. Klee, 282—440.

Where it is necessary for county clerk to reduce the county tax to the required rate, county tax for road and bridge purposes is subject to reduction. People vs. Sandberg, 282—245.

County tax for loss and cost of collection is subject to reduction. People vs. Sandberg, 282—245.

Tuberculosis sanitarium tax is subject to sealing. People vs. Wabash R. Co., 256—394.

3. Taxes Excluded:

Hard or rock road tax is not subject to reduction under amended Revenue law. People vs. Cairo V. & C. R. Co., 247—360.

The park and library tax should be excluded before reducing the city tax whether the city has a population of more or less than 150,000, and in either case the minimum rate below which the county clerk cannot reduce the city tax does not include the rate of the tax for park and library purposes. People vs. Cairo V. & C. R. Co., 248—554.

Before reducing tax for city purposes the rates of levy to pay principal and interest on bonded indebtedness and for library maintenance and library building purposes should be excluded. People vs. Chicago & E. Ill. R. Co., 248—596.

Tax to pay bonded indebtedness must be included in making up aggregate of rates for sealing. People vs. R. Co., 254—472; People vs. R. Co., 256—388.

The "road and bridge taxes" which are excluded from reduction does not include an item of county tax based upon an appropriation for roads and bridges or an item of city tax based upon an appropriation for streets, alleys and sidewalks. People vs. Illinois Cent. R. Co., 256—332.

A tax to pay any judgment against a county is not subject to reduction and it is not necessary there be both a judgment and a mandate for its payment, and the nature of the indebtedness or liability is immaterial. People vs. Cairo, V. & C. R. Co., 261—162; same vs. Illinois Cent. R. Co., 260—603.

Where the county clerk restored the county rate to 40 cents, having sealed it below that, it is proper to add a rate to pay bonds and interest in addition to the rate of 40 cents. People vs. R. Co., 270—477.

Though the tax for mothers' pension fund cannot be reduced in the sealing process, it must be considered when taxes for other county purposes are being sealed to make the rate of 40 cents, and it is improper to add the rate per cent of mothers' pension fund to the rate of 40 cents. People vs. R. Co., 270—477; People vs. Sandberg, 282—247.

Firemen's Pension Fund Act for June 29, 1915, and the Police Pension Fund Act for the same year, for the city of Chicago, provide for a new and additional tax not within the terms of the Tax Reduction Act. People vs. Day, 277—543.

The taxes for parents' pension is not subject to reduction. People vs. Klee, 282—440.

A tuberculosis sanitarium tax authorized under act of 1915 is not subject to reduction. *People vs. Wabash R. Co.*, 286—15.

4. Uniformity in Scaling:

When it becomes necessary, under the provisions of the act, to reduce the rate of tax levy in any portion of a taxing district, the act require the same per cent of reduction in the rate of such tax levy in every other part of such taxing district, in order that a uniform rate shall apply throughout each district. *Town of Cicero vs. Haas*, 244—551; *People vs. R. Co.*, 248—87; *People vs. R. Co.*, 248—596, 597.

Where part of a township in which tax rates are highest is within limits of school district and city, and the district and city overlap, but neither are entirely with the other, town tax must be scaled throughout township. *People vs. Chicago & A. R. Co.*, 247—458.

5. Distribution of Reduction:

The county clerk in scaling taxes to reduce the total levy of the county so as to bring it within the maximum of 75 cents, has not authority to take the whole of the excess from any one item, even though the item is levied as an amount appropriated for loss occasioned by operation of the tax extension law. *People vs. R. Co.*, 266—150.

6. City Levy:

The act of June 29, 1915 (*Laws 1915*, p. 291), concerning park taxes, is not in conflict with Juhl Law as amended June 10, 1915, and the latter act alone governs as to the limitations of park taxes in excess of city taxes in cities over 50,000 and less than 150,000 population. *People vs. Wabash R. Co.*, 276—92.

TAXATION OF BRIDGES ACROSS NAVIGABLE WATERS ON THE BORDERS OF THE STATE.

AN ACT to provide for the assessment and taxation of bridges across navigable waters on the borders of this State. [Approved and in force May 1, 1873]

Bridges on border of state—How assessed.] Section 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly, That all bridge structures across any navigable streams forming the boundary line between the State of Illinois and any other state, shall be assessed by the township or other assessor in the county or township where the same is located, as real estate; and all provisions of law relating to the assessment and taxation of real estate, shall apply to the assessment and taxation of such bridges. Such assessor shall give in his description the quarter section, section, township and range in which such bridge is located or terminates in this state, together with the metes and bounds of the ground occupied by such bridge, and the approaches thereto from the end on the Illinois shore to the center of the main channel of the stream crossed by the same. For the purpose of obtaining such description the assessor may employ a competent surveyor, and the expense of making such survey and description shall be

charged as a tax against such property by the county clerk, on the certificate of the surveyor: Provided, that one survey of any bridge and approaches, made under this act, shall be deemed sufficient for the purpose of subsequent assessment of such bridge or approaches.

Does not refer to capital stock of bridge companies, or exempt their stock from taxation. The purpose of the act was to be able to sell the bridge for delinquent taxes. *Quincy Bridge Co. vs. Adams Co.*, 88—615.

Where a railroad company bought a bridge of a bridge company, and filed its statement including that as "railroad track," and such was assessed by the State Board of Equalization, it was not proper for the local assessor to tax the bridge, as the statute of 1873 (*Hurd's 1899*, par. 354, p. 1457) applies only to bridges not classed as railroad track. It is not necessary for Board of Equalization to tax all of bridge; only that part considered "railroad track." *People vs. Ry Co.*, 206—252.

A bridge owned by a railroad company must be taxed as railroad property, and by the State Board of Equalization only, but a bridge leased by a railroad company may be taxed under this Act, where the lease is not in perpetuity, and notwithstanding it is strictly a railroad bridge. *Chicago, etc., R. Co., vs. P.*, 153—409 (1894).

An assessor in this State, in assessing a bridge over a navigable river forming a boundary of the State, will have no right to assess any part of such bridge that is located beyond the boundary line of this State. It is duty of assessor to state length of bridge and approaches assessed. *Keokuk-Hamilton Bridge Co. vs. P.*, 145—596 (1893).

Whether bridge property was assessed more or less than it should have been, and more or less than other like property in the county, are, in the absence of fraud, questions which a court cannot consider upon an application by the People for a judgment for taxes. *Keokuk, etc., Bridge Co. vs. P.*, 145—596 (1893).

Assessment of bridges and approaches in one amount is proper. *Keokuk Bridge Co. vs. P.*, 176—267.

All that part of the St. Louis bridge, which lies east of the middle thread of the Mississippi River, as it now is, is within the State of Illinois, and being so, is subject to taxation by the State, St. Clair County, and the City of East St. Louis. *St. Louis Bridge Co. vs. P.*, 125—226.

All that part of the St. Louis bridge, with its approaches, that lies east of the middle line of the main channel of the Mississippi River, is within the jurisdiction of the State of Illinois for the purposes of State and local taxation. *Butternuth vs. St. Louis Bridge Co.*, 123—535.

Sale of bridge, etc., for tax.] Section 2. In default of the payment of any such tax assessed against any such bridge company, as aforesaid, such bridge structure, and approaches thereto, so far as the same are located within this state, together with the land on which the same is located, as described by the assessor, and the franchise belonging thereto, shall be sold for such tax at the same time and in the same manner as other real estate shall be sold in such county for delinquent tax; and any county, city, town, school district, or other municipal corporation, interested in the collection

of the tax levied upon such bridge, may become the purchaser at such sale, or at any sale of such property under judgment recovered upon, or to enforce the collection of such tax; and if the property so sold is not redeemed, may acquire, hold, sell and dispose of the title thereto. [As amended by act approved May 3, 1877. In force July 1, 1877. L. 1877, p. 171.]

Repeal.] Section 3. All acts and parts of acts inconsistent with this act are hereby repealed.

Emergency.] Section 4. Whereas, by existing law such bridge structures cannot be sold for delinquent taxes, so as to convey a good title thereto, wherefore an emergency exists why this act should take effect immediately: therefore this act shall take effect and be in force from and after its passage.

ACT REGARDING THE COLLECTION OF TAXES AND SPECIAL ASSESSMENTS.

AN ACT in relation to the collection of taxes and special assessments. [Approved and in force May 2, 1873.]

Whereas certain requirements of the general revenue law of this state, relating to the mode of advertising the list of delinquent taxes and special assessments, to making application for judgment thereon, and the manner of making the tax sale, are impracticable; and whereas, it is desirable to remove existing defects as to the manner of collecting the taxes and special assessments: therefore,

When description in special assessment different from tax books.] Section 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly: When a return to the county collector has been made or shall hereafter be made of any real estate delinquent for any special assessment, or annual instalment thereof, levied by any incorporated city, town or village, or by any corporate authorities, commissioners or persons, pursuant to law, which assessment or instalment thereof is required by law to be included in the advertisement and notice of application for judgment for state and county taxes, and the description or subdivision of any real estate described in such return is different from the description or subdivision thereof as described in the town or district collector's book returned to such county collector, it shall and may be lawful for the county collector to advertise all the real estate delinquent for any such assessment described in such return, according to the description thereof, as contained in such return; but such advertisement shall be made at the same time, and shall form part of his advertisement of real estate delinquent for state and county taxes. [See Sections 178-188.]

How described.] Section 2. The said real estate, so advertised, may be described in the county collector's delinquent return, according to the description thereof, as contained in such return and advertisement; and like proceedings shall be had to the application for judgment, and the judgment thereon, the sale and issuance of the certificate of the sale thereof, redemption from such sales and issuance of deeds thereon, as may be required by law to be had in regard to lands delinquent for state and county taxes.

City, etc., may buy in at sale.] Section 3. Any incorporated city, town or village, or corporate authorities, commissioners, or persons interested in any such special assessment or instalment thereof, may become purchaser at any sale, and may designate and appoint some officer or person to attend and bid at such sale on its behalf.

Emergency.] Section 4. Whereas many special assessments are now in process of collection, whereby an emergency exists why this act shall take effect immediately: therefore, this act shall take effect and be in force from and after its passage.

APPORTIONMENT OF SPECIAL ASSESSMENTS.

AN ACT concerning the apportionment of special assessments payable in instalments. [Approved April 13, 1875. In force July 1, 1875. L. 1875, p. 36.]

Apportionment of special assessments payable in instalments.]

Section 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly, That in all cases where any special assessment, payable in installments, has been, or hereafter shall be made by any corporate authority, for supplying water, or other corporate purpose, and the owner or owners of any lot, block or parcel of land so assessed, or some of them, shall desire to subdivide the same, and to apportion such assessment and the several instalments thereof in such manner that each parcel of such proposed subdivision shall bear its just and equitable proportion thereof, the same may be done in the manner following, to wit: The owner or owners of such lot, block or parcel of land shall present to such corporate authority a petition, setting forth:

1. The descriptive character of the assessment and the date of the confirmation of the same.

2. The names of the owners.

3. A description of the land proposed to be subdivided, together with the amount of each instalment thereon, and the year or years for which the same are due.

4. A plat showing the proposed subdivision.

5. The proposed apportionment of the amount of each instalment on each lot or parcel according to such proposed subdivision. Such petition shall be acknowledged in the manner provided for the acknowledgment of deeds, and if such corporate authority shall be satisfied therewith, they shall cause to be indorsed upon or attached to such petition their approval by their clerk or secretary, under their corporate seal, and the same, so approved, shall be filed and recorded in the office of the county clerk in which such land shall be situate, and such apportioned assessment shall stand in place of the original assessment, and the same and the several instalments thereof shall be deemed duly apportioned, and the several amounts so apportioned shall be liens upon the several parcels charged, respectively; and for the purpose of collecting the same all proceedings shall be had and taken as if said assessment and instalments had been made and apportioned in the first instance according to such apportioned description and amounts, and the respective owners shall be held to have waived every and all objections to such assessment and the apportionment aforesaid: Provided, this act shall not apply to any lot, block or parcel of land on which there shall remain due and unpaid any instalment. In case the owners are unable to agree as to such apportionment, or any of them are under legal disability, one or more of them may file a petition with the circuit court of the county in which such land so assessed is situate, substantially in form as hereinbefore provided; and in such case such corporate authority, together with all owners or persons interested, not joined as petitioners and unknown owners, if any, shall be made parties defendant, and all proceedings in relation thereto shall be had as in cases in chancery. The court may hear and determine the case according to the right of the matter. A copy of the record of the proceedings of the court in the premises in case of an apportionment, duly certified, shall be filed and recorded in the office of such county clerk, and the same shall thereupon, as to the land therein embraced, the owners thereof, the apportionment aforesaid, and the collection of the several amounts apportioned, have the same force and effect as is hereinbefore provided in cases where such corporate authorities shall approve of a petition and file and record the same.

ACT TO RESTORE UNIFORMITY OF TAXATION.

AN ACT to restore uniformity in the taxation of real and personal property, for all purposes, in the several counties and cities of this State. [Approved January 4, 1872. In force July 1, 1872.]

Uniformity restored.] Section 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly, That

the real and personal property within all incorporated towns and cities in every county in this state shall be taxable for all purposes, any local or special law in regard to exemption of any particular town or city to the contrary notwithstanding; and all provisions of law in conflict with this act are hereby repealed; but nothing herein shall be construed as authorizing the taxation of property allowed to be exempt by any general law now in force or that may hereafter be passed. And all laws requiring any city to support and provide for its paupers, to assume liabilities, or perform duties required of counties by the general laws of this State, are hereby repealed; and the general laws of this State upon such subjects, in relation to counties and cities, shall be applicable to all counties and cities in the State.

The repealing part of this statute, i. e., Act of January 4, 1872, applies to incorporated towns as well as to cities. *Bruner vs. Madison County*, 111—15; citing *Burke vs. Monroe Co.*, 77—611.

INHERITANCE TAX ACT OF 1909.

[Introductory:]

Constitutionality of act upheld. The law provides for six classes, on each of which the tax is uniform, and this is sufficient. *Kochersperger vs. Drake*, 167—122.

Inheritance tax is not "in pari materia" with the revenue tax. One taxes the right of succession to property; the other the property itself. *People vs. Griffith*, 245—530.

The State is interested as a beneficiary in every transfer of property by death, the State acquires title to its portion of the estate immediately upon death of the owner, and such portion becomes severed from the remainder by operation of law and cannot pass either by descent or devise. *National Safe Deposit Co. vs. Stead*, 250—584; *Northern Trust Co. vs. Buck & Rayner*, 263—222.

The Inheritance Tax law imposes a special tax, and in case of doubt the language must be construed strictly against the government and in favor of the taxpayer. In *re Estate of Ullmann*, 263—528, 530.

The Inheritance Tax act of 1909 is a complete revision of the statute of 1895, is broader in its terms than the previous act and was designed to reach certain voluntary transfers of property which could not be taxed under the prior statute. *People vs. Carpenter*, 264—400, 403.

AN ACT to tax gifts, legacies, inheritances, transfers, appointments and interests in certain cases, and to provide for the collection of the same, and repealing certain Acts therein named. [Approved June 14, 1909. In force July 1, 1909. *Laws 1909*, p. 311.]

What property is subject to this act—Rates of taxation prescribed exemptions.] Section 1. A tax shall be and is hereby imposed upon the transfer of any property, real, personal or mixed, or of any interest therein or income therefrom, in trust or otherwise,

to persons, institutions or corporations,¹ not hereinafter exempted, in the following cases:

1. When the transfer is by will or by the intestate laws² of this State,³ from any person dying, seized or possessed of the property while a resident of the State.⁴

2. When the transfer is by will or intestate laws of property within the State and the decedent was a non-resident of the State at the time of his death.⁵

3. When the transfer is of property made by a resident, or by a non-resident when such non-resident's property is within this State, by deed, grant, bargain, sale or gift, made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death.⁶ When any such person, institution or corporation becomes beneficially entitled⁷ in possession or expectancy to any property or the income therefrom, by any such transfer, whether made before or after the passage of this act.⁸

4. Whenever any person, institution or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this Act, such appointment, when made, shall be deemed a taxable transfer under the provisions of this Act, in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of this Act shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

5. Whenever property, real or personal, is held in the joint names of two or more persons, or is deposited in banks or other institutions or depositories in the joint names of two or more persons and payable to either or the survivor, upon the death of one of such persons the right of the surviving joint tenant or joint tenants, person or persons, to the immediate ownership or possession and enjoyment of such property shall be deemed a transfer taxable under the provisions of this Act in the same manner as though the whole property to which such transfer relates was owned by said parties

as tenants in common and had been bequeathed to the surviving joint tenant or joint tenants, person or persons, by such deceased joint tenant or joint depositor by will.

When the beneficial interests to any property or income therefrom shall pass to or for the use of any father, mother, lineal ancestor of decedent, husband, wife, child, brother or sister, wife or widow of the son or the husband of the daughter, or any child or children legally adopted, or to any person to whom the deceased, for not less than ten years prior to death, stood in the acknowledged relation of a parent: Provided, however, such relationship began at or before said person's fifteenth birthday and was continuous for said ten years thereafter: And, provided, also, that one of the parents of such person so standing in such relation shall be deceased when such relationship commenced, or to any lineal descendant of such decedent (decedent) born in lawful wedlock⁹. In every such case the rate of tax¹⁰ shall be:

One per cent on any amount up to and including the sum of fifty thousand dollars in excess of the exemption;

Two per cent on the next one hundred thousand dollars or any part thereof:

Three per cent on the next one hundred thousand dollars or any part thereof:

Five per cent on the next two hundred and fifty thousand dollars or any part thereof:

Seven per cent on the amount representing the balance of each individual transfer: Provided, that any gift, legacy, inheritance, transfer, appointment or interest passing to a father, mother, lineal ancestor of decedent, husband, wife, child, wife or widow of the son or the husband of the daughter or any child or children legally adopted or to any person to whom the deceased, for not less than ten years prior to death, stood in the acknowledged relation of a parent as above provided which may be valued at a less sum than twenty thousand dollars shall not be subject to any such duty or taxes and the tax is to be levied in such cases only upon the excess of twenty thousand dollars received by each person: And, provided, further, that any gift, legacy, inheritance, transfer, appointment or interest passing to a brother, sister, which may be valued at a less sum than ten thousand dollars shall not be subject to any such duty or taxes and the tax is to be levied in such cases only upon the excess of ten thousand dollars received by each person.

When the beneficial interests to any property or income therefrom shall pass to or for the use of any uncle, aunt, niece, nephew or

any lineal descendant of such uncle, aunt, niece or nephew. In every case the rate of tax shall be:

Three per cent on any amount up to and including the sum of twenty thousand dollars, in excess of the exemption.

Four per cent on the next fifty thousand dollars or any part thereof:

Six per cent on the next one hundred thousand dollars or any part thereof:

Eight per cent on the amount representing the balance of each individual transfer: Provided, that any gift, legacy, inheritance, transfer, appointment or interest passing to an uncle, aunt, niece, nephew or any lineal descendant of such uncle, aunt, niece or nephew which may be valued at a less sum than five hundred dollars shall not be subject to any such duty or taxes and the tax is to be levied in such case only upon the excess of five hundred dollars received by such uncle, aunt, niece, nephew or any lineal descendant of such uncle, aunt, niece, or nephew.

In all other cases the rate of tax shall be as follows:

Five per cent on any amount up to and including the sum or twenty thousand dollars in excess of the exemption:

Six per cent on the next thirty thousand dollars or any part thereof:

Eight per cent on the next fifty thousand dollars or any part thereof:

Ten per cent on the next fifty thousand dollars or any part thereof:

Twelve per cent on the next one hundred thousand dollars or any part thereof:

Fifteen per cent on the amount representing the balance of each individual transfer: Provided, that any gift, legacy, inheritance, transfer, appointment or interest passing to such persons which may be valued at a less sum than one hundred dollars shall not be subject to any such duty or taxes and the tax is to be levied in such cases only upon the excess of one hundred dollars received by each person.

The tax imposed hereby shall be upon the clear market value of such property,¹¹ at the rates hereinabove prescribed. [Amended by act approved June 28, 1919. In force July 1, 1919.]

1. Corporations:

The word "corporation" is broad enough to include municipal corporations of every character and applies to every corporation not afterwards exempted in the statute, it includes property of an interstate transferred to a county by the State of Escheat. *People vs. Richardson*, 269—275.

2. Will or Intestate Laws:

Dower is subject to inheritance tax, where the widow renounced the provisions of the will in her behalf, in lieu of dower. *Billings vs. P.*, 189—475.

“Intestate laws,” as used in section above, mean those laws which govern the devolution of estates of persons dying intestate, and include all applicable rules of the common law in force in this State. *Billings vs. P.*, 189—477.

The Statute of Escheat is part of intestate laws of the State and Inheritance Tax law applies to property escheated to county. *People vs. Richardson*, 269—275.

The amount due widow under antenuptial contract payable to her as a substitute for and in lieu of dower and other interest as widow, payable upon condition she survive the husband cannot be deducted from value of estate in determining inheritance tax. *People vs. Estate of Field*, 248—147.

Bequests made by will of \$5,000 to trustees named therein, on condition that they will not charge or accept any further sum for their services as executors or trustees are taxable as passing by virtue of the will. *People vs. Bauder*, 271—446.

The widow's award and dower are subject to inheritance tax. *People vs. Forsyth*, 273—141.

3. Of This State:

The inheritance tax does not apply to land in a foreign State, whether passed by will or not. Construing “shall pass by will or by the intestate laws of the State.” Even though the will directs a conversion of such lands into money, it does not apply, as the doctrine of equitable conversion is not enforced in a court of law. *Connell vs. Crosby*, 210—380; *P. vs. Kellogg*, 268—489.

Inheritance tax may be assessed against succession to personal property owned by a resident of Illinois but situated in a foreign State. *People vs. Union Trust Co.*, 255—168; same vs. same, 280—170.

4. Resident of the State:

Domicile is the place of residence, and that is not changed by merely moving to another place unless such moving is accompanied by intention to change permanently. Where one who had intended at some time in the future to change his domicile, fell sick, and was thereupon taken away by his daughter, it cannot be said that this was such change of domicile contemplated by the Act. *People vs. Est. of Moir*, 207—180.

5. Non-resident of the State at the time of death:

The stocks and bonds of domestic corporations found in a safety deposit box in this State, the deceased being a non-resident, were taxable, but not the stocks and bonds of foreign corporations, found in the same box. *People vs. Griffith*, 245—532.

Shares of stock of a foreign corporation owned by a non-resident are not subject to tax in Illinois, when transferred by will of the non-resident, although such corporations do business and have tangible property in Illinois. *People vs. Cuyler*, 276—72; same vs. *Dennett*, 276—43; same vs. *Blair*, 276—623.

6. Made in contemplation of death:

Where a deed conveyed land absolutely on its face, but really with the understanding that the grantor withheld the profits for life, the property is subject to the inheritance tax. *People vs. Est. of Moir*, 207—180.

An gift made in anticipation of death is taxable under the inheritance act, regardless of intent to defraud. *Rosenthal vs. People*, 211—306.

- Any gift in contemplation of death, whether *causa mortis* or *inter vivos*, is taxable. *Estate of Merrifield vs. People*, 212—400.
- Where the father conveyed property in trust to pay the net income thereof to his sons, excepting \$200 per month, which was to go to the grantors during their lives. The proportion of the property to support the \$200 provision, which passed to the wife on the grantor's death, was taxable in her hands; the proportion of the corpus in the sons was taxable on the same basis. Whether the conveyance was in anticipation of death was a question of fact for the jury. *People vs. Kelley*, 218—510.
- That part of the inheritance tax law which taxes gifts made in contemplation of death, is not confined to gifts *causa mortis*, but applies to all gifts, the cause for making which is possibility of impending death. The tax is not one on property, but is a condition to the right of succession. In *re Estate of Benton*, 234—366; *People vs. Danks*, 289—542.
- The inheritance tax on the inheritance of a child being on the beneficial interest, is to be computed after deducting the value of the widow's dower interest. *People vs. Nelms*, 241—571.
- Gift held made in contemplation of death where donor was at time of transfer past 88 years of age, in poor health, under a specialist's care and constantly in charge of an attendant. *People vs. Danks*, 289—542.
- Deeds of property in trust for grantor's children held not intended to take effect after death, although deeds reserved right of revocation. *People vs. Northern Trust Co.*, 289—275.
- Where a conveyance is made by grantor to his son, who lived with his father until the latter's death, and there is no evidence of any contract for services rendered by the son but evidence shows the conveyance was made in contemplation of death and enjoyment and possession were postponed until death of grantor, the transfer is subject to tax. *People vs. Porter*, 287—401.
- The word "in contemplation of death" mean an appreciation of death arising from some existing infirmity or impending peril, they do not mean the general expectation of all rational mortals that they will die sometimes. *People vs. Carpenter*, 264—400; *People vs. Danks*, 289—542.
- The third clause is taken from the transfer tax statute of New York and when a statute is adopted from another State, the construction given by the courts of that State is adopted. *People vs. Carpenter*, 264—400, 404.
- Under a trust agreement made before act of 1909 took effect whereby donor's children are given a vested interest in bonds deposited, in equal shares, subject only to life interest in income, the interests of children are not subject to tax under clause 3, though donor did not die until after act took effect, where agreement was not made in contemplation of death, but a contingent life interest of person whose interest begins at death of donor is subject to tax. *People vs. Carpenter*, 264—400.
- Shares of stock in which the decedent had a life estate, only, the remainder being vested in her sons by valid agreement based upon a valuable consideration and not made in contemplation of death are not subject to tax as part of the estate of the deceased life tenant. *People vs. Orendorff*, 262—246.
- Where a father transfers his property to a person not related to him in any way, as consideration for a contract for the care of his afflicted daughter, and the property is taken possession of by the transferee, who begins and

completes the performance of her contract during grantor's lifetime, transfers and gifts are not subject to tax. *People vs. Burkhalter*, 247—600.

7. Beneficially interested:

"Beneficially entitled" and "beneficially interested" means a vested interest for own use or benefit. Because the tax varies with the degree of consanguinity, where the recipient is uncertain, the fixing of the tax is postponed. To authorize the imposition of the tax, practical and actual ownership must exist. *People vs. R. Hall McCormick*, 208—437.

Expectant estates are subject to inheritance tax, but assessment of tax upon remote and contingent interests incapable of present valuation must be postponed. *Billings vs. P.*, 189—485.

Only a beneficial interest is taxable, which is such an interest as a devisee or legatee takes solely for his own use and benefit and not merely as the holder of the title for the use of another. *People vs. Schaefer*, 266—334.

Equitable principles may be invoked to determine what persons have received the beneficial interests which are taxable and legatee of testator's entire personal estate is not liable for tax, even though the will gives him unconditional title, where gift was made upon understanding that legatee would hold legal title only and distribute property in accordance with memorandum prepared by testator; and the question of the tax is not affected by the fact the legatee did not execute any declaration of trust until long after testator's death. *People vs. Schaefer*, 266—334.

8. Before Passage of Act.

The only transfer made before the law of 1909 went into effect, liable to the tax, were wills where the death occurred after the law went into effect and gifts or voluntary transfer made in contemplation of death, where the death occurred after the statute became operative. *People vs. Carpenter*, 264—400.

9. Exemptions:

The exemption created by proviso does not apply to step-children and is not unconstitutional as creating discrimination against step-children. *People vs. Tatge*, 267—634.

10. Rate of Taxation:

Before the amendment of 1919 to section 1 in determining whether tax shall be assessed at the rate of one dollar or two dollars upon the hundred of clear market value, the amount of the property received by the person, after deducting the \$20,000 exemption is the amount which should be taken, and if such amount is less than \$100,000 the tax rate is one dollar on each \$100 valuation. In re *Estate of Uhlmann*, 263—528.

When the value of a life estate left to a person not of kin to the decedent is between \$20,000 and \$50,000, the donee is liable to a tax at five per cent of its value. *People vs. Freese*, 267—164.

11. Market Value of Property:

The market value of property of decedent at the time of his death is the basis for fixing inheritance tax. *Hanberg vs. Morgan*, 263—616.

[Sec. 2 of the Inheritance Tax Act, as it existed prior to July 1, 1909, provided as follows:

"When any person shall bequeath or devise any property or interest therein or income therefrom to mother, father, husband, wife, brother and sister, the widow of the son or a lineal descendant during the life or for a term of years or remainder to the collateral heir of the decedent, or to the

stranger in blood² or to the body politic or corporate at their decease, or on the expiration of such term, the said life estate or estates for a term of years shall not be subject to any tax and the property so passing shall be appraised immediately after the death³ at what was the fair market value thereof at the time of the death of the decedent in the manner hereinafter provided, and after deducting therefrom the value of said life estate, or term of years,⁴ the tax transcribed by this act on the remainder shall be immediately⁵ due and payable to the treasurer of the proper county, and, together with the interests thereon, shall be and remain a lien on said property until the same is paid: Provided, that the person or persons or body politic or corporate beneficially interested in the property chargeable with said tax elect not to pay the same until they shall come in the actual possession or enjoyment of such property, or, in that case said person or persons or body politic or corporate shall give a bond to the People of the State of Illinois in the penalty three times the amount of the tax arising upon such estate with such sureties as the county judge may approve, conditioned for the payment of the said tax and interest thereon at such time or period as they or their representatives may come into the actual possession or enjoyment of said property; which bond shall be filed in the office of the county clerk of the proper county;⁶ Provided further, that such person shall make a full, verified return of said property to said county judge, and file the same in his office within one year from the death of the decedent, and within that period enter into such securities and renew the same for five years.”

The cases containing the several phrases referred to are as follows:

1. Life estate or term for years:

“Or” is construed “and” to give the effect that if a life estate or term for years go to mother, father, etc., and remainder to collateral heir of the decedent, or to a stranger in blood, then such prior estate not taxable, but if remainder to lineals, then prior estate is. *Billings vs. P.*, 189—472.

2. Collateral heir or stranger to the blood:

Under Sec. 2 of the inheritance tax, in order to deduct a life estate or term for years from the value of an estate in remainder, the remainderman must be a collateral heir, or a stranger to the blood or a body politic. No other section provides any exception to immediate taxation. *In re Estate of Kingman*, 220—563.

Life estate or estate for years is only exempt when remainder is to collateral heir, stranger in blood, or body politic or corporate. *Ayers vs. Trust Co.*, 187—56.

3. Appraised immediately after death:

Appraisement provided for in section above should be made immediately after death of testator. *Ayers vs. Trust Co.*, 187—52.

4. Deducting value of life estate or term of years:

Where the wife renounces the provisions of the will, the life estate given her therein is not to be exempted. *Connell vs. Crosby*, 210—380.

Tax is imposed by section above upon all interests, incomes and expectancies, except those estates for life and years exempted by the ensuing section. *Ayers vs. Trust Co.*, 187—57.

This Sec. 2 exempts life estate and term for years under the circumstances specified. *Billings vs. P.*, 189—472.

Appraisement mentioned in section above, made by deducting value of life estate. *Ayers vs. Trust Co.*, 187—54.

5. Tax on remainder immediately due:

Payment of tax upon remainders mentioned in section above becomes due upon testator's death, except as therein otherwise provided. *Ayers vs. Trust Co.*, 187—53.

6. Election by remainderman:

Where the remainderman cannot and does not make election to give bond as provided by Sec. 2, the tax becomes due at once. *People vs. Nelms*, 241—571.

Appraisement of life interest—Accrued tax a lien on entire property—Bond for deferred payment.] Section 2. When any property or interest therein or income therefrom shall pass or be limited for the life of another, or for a term of years, or to terminate on the expiration of a certain period the property of the decedent so passing shall be appraised immediately after the death of the decedent, and the value of the said life estate, term of years or period of limitation shall be fixed upon mortality tables, using the interest rate or income rate of five per cent; and the value of the remainder in said property so limited shall be ascertained by deducting the value of the life estate, term of years or period of limitation from the fair market value of the property so limited, and the tax on the several estate or estates, remainder or remainders, or interests shall be immediately due and payable to the treasurer of the proper county, together with interest thereon, and said tax shall accrue as provided in section three (3) of this act, and remain a lien upon the entire property limited until paid: Provided, that the person or persons, body politic or corporate, beneficially interested in property chargeable with said tax, elect not to pay the same until they shall come into actual possession or enjoyment of such property, then in that case said person or persons, or body politic or corporate, shall give bond to the People of the State of Illinois in a penal sum three times the amount of the tax arising from such property, limited with such sureties as the county judge may approve, conditioned for the payment of the said tax and interest thereon at such time or period as they or their representatives may come into the actual possession or enjoyment of said property; which bond shall be filed in the office of the county clerk of the proper county: Provided, further, that such person or persons, body politic or corporate, shall make a full verified return of said property to said county judge and file the same in his office within one year from the death of the decedent, with the bond and sureties as above provided; and, further, said person or persons, body politic or corporate shall renew said bond every five years after the date of the death of decedent.

No conflict exists between sections 2 and 25 as section 2 requires that a life estate depending upon no condition or contingency shall be appraised and its value fixed upon mortality tables immediately after the death of decedent, whereas section 25 applies if said life estate depends upon any contingency or condition. *People vs. Donohue*, 276—88.

Interest on deferred payment of tax assessed—Bond of executors and others.] Section 3. All taxes imposed by this act, unless otherwise herein provided for, shall be due and payable, at the death of the decedent, and interest at the rate of six per cent per annum shall be charged and collected thereon for such time as said taxes are not paid: Provided, that if said tax is paid within six months from the accruing thereof, interest shall not be charged or collected thereon, but a discount of five per cent shall be allowed and deducted from said tax; and in all cases where the executors, administrators or trustees do not pay such tax within one year from the death of the decedent, they shall be required to give a bond in the form and to the effect prescribed in section 2 of this act, for the payment of said tax, together with interest.

That portion of an estate which under the Inheritance Tax law vests in the State accrues immediately upon the death of the decedent, and all questions concerning it must be determined as of the date of the decedent's death. *People vs. Richardson*, 269—275.

The interest provided for on taxes remaining unpaid is not in the nature of a penalty but is a mere measure of compensation to the State for the loss of the use of the money, the provision is positive and self-executing and the county court on an appeal from the order of the county judge assessing the tax cannot remit the interest in the absence of authority given by statute. *People vs. Baldwin*, 287—87.

Duties of executors and administrators.] Section 4. Any administrator, executor or trustee having any charge or trust in legacies or property for distribution subject to the said tax shall deduct the tax therefrom, or if the legacy or property be not money he shall collect a tax thereon upon the appraised value thereof from the legatee or person entitled to such property, and he shall not deliver or be compelled to deliver any specific legacy or property subject to tax to any person until he shall have collected the tax thereon; and whenever any such legacy shall be charged upon or payable out of real estate the heir or devisee before the paying the same, shall deduct said tax therefrom, and pay the same to the executor, administrator or trustee, and the same shall remain a charge on such real estate until paid, and the payment thereof shall be enforced by the executor, administrator or trustee in the same manner that the said payment of said legacies might be enforced if, however, such legacy be given in money to any person for a limited period; he shall retain the tax upon the whole amount, but

if it be not in money he shall make application to the court having jurisdiction of his accounts, to make an apportionment if the case requires it of the sum to be paid into his hands by such legatees and for such further order relative thereof as the case may require

The executor, administrator or trustee cannot retain out of the property that comes into his hands, as a gross amount, the entire sum of taxes imposed, but can only retain from any legacy in his hands the tax due thereon. *People vs. Union Trust Co.*, 255—168.

Liability of executors and others.] Section 5. All executors, administrators and trustees shall be personally liable for the payment of taxes and interest, and where proceedings for collection of taxes assessed be had, said executors, administrators and trustees shall be personally liable for the expenses, costs and fees of collection. They shall have full power to sell so much of the property of the decedent as will enable them to pay said tax, in the same manner as they may be enabled to do by law, for the payment of duties of their testators and intestates, and the amount of said tax shall be paid as hereinafter directed.

The provision that executors, administrators and trustees shall be personally liable for the tax applies only to property within the State at the testator's death or which thereafter comes into his possession. *People vs. Union Trust Co.*, 255—168.

Where legacies are paid directly to non-resident beneficiaries by a foreign administrator out of property owned by a resident of Illinois but situated in the foreign State neither Illinois administrator nor trustee is responsible for Illinois tax on legacies so paid out. *People vs. Union Trust Co.*, 255—168; same vs. same, 280—170.

A trustee has an appealable interest if he believes an inheritance tax unjust, not only to preserve the rights of the beneficiaries but to protect himself from personal liability in case he should pay a claim that should afterwards be adjudged illegal. *People vs. Northern Trust Co.*, 266—139.

Where bequests to non-resident beneficiaries have been paid by an ancillary executor out of proceeds of sales made by him under the will and approved by a court of a foreign State, of real estate, in such State, the Illinois executor cannot be compelled to pay from residuary estate or from his personal funds tax assessed on such bequests. *People vs. Kellogg*, 268—489.

Payment of tax—How made by executor and others—Receipt of state treasurer.] Section 6. Every sum of money retained by any executor, administrator or trustee, or paid into his hands for any tax on any property, shall be paid by him within thirty days thereafter to the treasurer of the proper county, and the said treasurer or treasurers shall give, and every executor, administrator or trustee shall take duplicate receipts from him of said payments, one of which receipts he shall immediately send to the state treasurer, whose duty it shall be to charge the treasurer so receiving the tax

with the amount thereof, and shall seal said receipt with the seal of his office and countersign the same and return it to the executor, administrator or trustee, whereupon it shall be a proper voucher in the settlement of his accounts; but the executor, administrator or trustee shall not be entitled to credit in his accounts or be discharged from liability for such tax unless he shall purchase a receipt so sealed and countersigned by the treasurer and a copy thereof certified by him.

Executor and others to give information to county treasurer.]

Section 7. Whenever any of the real estate of which any decedent may die seized shall pass to any body politic or corporate, or to any person or persons, or in trust for them, it shall be the duty of the executor, administrator or trustee of such decedent to give information thereof in writing to the treasurer of the county where said real estate is situated, within six months after they undertake the execution of their expected duties, or if the fact be not known to them within that period, then within one month after the same shall have come to their knowledge.

Refunding tax retained by executor and others.] Section 8.

Whenever debts shall be proved against the estate of the decedent after distribution of legacies from which the inheritance tax has been deducted in compliance with this act, and the legatee is required to refund any portion of the legacy, a proportion of the said tax shall be repaid to him by the executor or administrator if the said tax has not been paid into the State or county treasury, or by the county treasurer if it has been so paid.

County treasurer is not, however, authorized to retain moneys collected by him for inheritance taxes for longer period than is reasonably required for its transmission to State treasurer. *P. vs. Raymond*, 188—458.

Foreign executor transferring stocks—Notice to treasurer and attorney general—Liability of custodians.] Section 9. If a foreign executor, administrator or trustee shall assign or transfer any stock or obligations in this State standing in the name of a decedent or in trust for a decedent, liable to any such tax, the tax shall be paid to the treasurer of the proper county on the transfer thereof. No safe deposit company, trust company, corporation, bank or other institution, person or persons having in possession or under control securities, deposits, or other assets belonging to or standing in the name of a decedent who was a resident or non-resident or belonging to, or standing in the joint names of such a decedent and one or more persons, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer herein

provided shall deliver or transfer the same to the executors, administrator or legal representatives of said decedent, or to the survivor or survivors when held in the joint names of a decedent and one or more persons, or upon their order or request, unless notice of the time and place of such intended delivery or transfer be served upon the state treasurer and attorney general at least ten days prior to said delivery or transfer; nor shall any such safe deposit company, trust company, corporation, bank or other institution, person or persons deliver or transfer any securities, deposits or other assets belonging to or standing in the name of a decedent, or belonging to, or standing in the joint names of a decedent and one or more persons, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, without retaining a sufficient portion or amount thereof to pay any tax or interest which may thereafter be assessed on account of the delivery or transfer of such securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, under the provisions of this article, unless the state treasurer and attorney general consent thereto in writing. And it shall be lawful for the state treasurer, together with the attorney general, personally or by representatives, to examine said securities, deposits or assets at the time of such delivery or transfer. Failure to serve such notice or failure to allow such examination, or failure to retain a sufficient portion or amount to pay such tax and interest as herein provided shall render said safe deposit company, trust company, corporation, bank or other institution, person or persons liable to the payment of the amount of the tax and interest due or thereafter to become due upon said securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, and in addition thereto, a penalty of one thousand dollars; and the payment of such tax and interest thereon, or of the penalty above prescribed, or both, may be enforced in an action brought by the state treasurer in any court of competent jurisdiction.

This section is constitutional. *National Safe Deposit Co. vs. Stead*, 250—584, affirmed 232 U. S. 58.

Refunding excess of tax by state treasurer.] Section 10. When any amount of said tax shall have been paid erroneously to the State treasury, it shall be lawful for him on satisfactory proof

rendered to him by said county treasurer of said erroneous payments to refund and pay to the executor, administrator or trustee, person or persons who have paid any such tax in error the amount of such tax so paid: Provided, that all applications for the repayment of said tax shall be made within two years from the date of said payment.

The order of County Court on county treasurer to refund money paid in excess was erroneous; as recourse allowed by statute is to State's treasurer. *People vs. Griffith*, 245—532.

Appraisement of property—How made.] Section 11. It shall be the duty of the county judge to ascertain whether any transfer of any property be subject to an inheritance tax under the provisions of this Act, and, if it be subject to such inheritance tax, to assess and fix the then cash value of all estates, annuities and life estates or terms of years growing out of said estates and the tax to which the same is liable. The county judge, upon the application of any interested party, including the Attorney General, or upon his own motion as often as, or whenever occasion may require, may hear evidence and determine the fair cash value of such estate and the amount of inheritance tax to which the same is liable or the county judge may, in such case, in his discretion, where the facts are complicated and evidence is voluminous, appoint some competent person as appraiser to appraise the fair cash value at the time of the transfer thereof of the property of persons whose estates shall be subject to the payment of any inheritance tax imposed by this Act. Whether the fair cash value of such estate shall be ascertained and determined by the appraiser appointed by the county judge or by the county judge, (Court) notice shall, in each case, be given by mail to all persons known to have a claim an [or] interest in such property, including the Attorney General, and to such persons as the county judge by order directs, of the time and place he will appraise such property: Provided, that in counties of the third class, because of the volume of general business transacted in the County Courts of such counties, the county judge in such counties of the third class may, in his direction, appoint appraisers in any and all cases. In case an appeal is taken to the County Court, it shall be the duty of the county clerk, within two days after such appeal shall have been perfected, to notify in writing the Attorney General and county treasurer. Within five days after the judgment of the County Court shall be entered on appeal, it shall be the duty of the county clerk to make and transmit a certified copy of such judgment to the Attorney General and county treasurer. Persons of full age and sui juris may, in writing,

waive such notice, and consent to an immediate hearing by the county judge or the appraiser, as the case may be.

Both the appraiser and the county judge are hereby authorized and empowered to use subpoenas for and to compel the attendance of witnesses before them, respectively, and to take the evidence of such witnesses under oath. Any person who shall be served with a subpoena to appear and testify or to produce books and papers, issued either by the county judge or by the appraiser, and who shall refuse or neglect to appear or testify or to produce books and papers relevant to such assessment, as commanded in such subpoena, shall be deemed guilty of a misdemeanor, and shall, on conviction, be punished by a fine of not less than ten dollars nor more than twenty-five dollars for each offense. Any Circuit Court or judge thereof, either in term time or vacation, upon application of the county judge or appraiser, as the case may be, may, in its or his discretion, compel the attendance of witnesses, the production of books and papers, and giving of testimony before such county judge or appraiser, as the case may be, by attachment for contempt or otherwise in the same manner as the production of evidence may be compelled before said court. When the evidence is taken by an appraiser, he shall make a report thereof and of such value in writing to said county judge, with the depositions of the witnesses examined and such other facts in relation thereto, and to said matters as said county judge may by order require. The order of the county judge assessing and fixing an inheritance tax, together with the report, if any, of appraiser appointed by such county judge, shall be filed in the office of the county clerk. It shall be the duty of the county clerk, within five days after the filing of such order assessing and fixing the inheritance tax, to make and transmit a certified copy of such order to the Attorney General and to the county treasurer of the county in which such assessment is had, and, also, to give notice by mail to all parties known to be interested in such estate, substantially in such form as may be prescribed and furnished to the county clerk by the Attorney General.

Any person or persons, including the Attorney General, dissatisfied with the appraisalment or assessment, may appeal therefrom to the County Court of the proper county within sixty days after the making and filing of such assessment order on paying or giving to the county judge security satisfactory to pay all costs, together with whatever taxes shall be fixed by the court: Provided, no bond or security shall be required of the Attorney General.

The said appraiser shall be paid by the county treasurer out of any funds he may have in his hands on account of the inheritance tax collected in said appraisement, as by law provided, on the certificate of the county judge, such compensation as such judge may deem just for said appraiser's service as such appraiser, not to exceed ten dollars (\$10) per day for each [day] actually and necessarily employed in such appraisement and not to exceed fifteen per cent of the aggregate amount of tax levied and assessed by the county judge: Provided, such appraiser shall in no case receive less than ten dollars (\$10).

Such appraiser shall, also, be entitled to receive his actual and necessary traveling expenses and disbursements, including witness fees paid by him, if any, such expenses and disbursements to be paid by the county treasurer on the order of the county judge, out of the inheritance tax collected in such appraisement.

It shall be the duty of the Attorney General to exercise general supervision over the assessment and collection of the inheritance tax provided in this Act, and in the discharge of such duty, the Attorney General may institute and prosecute such suits and proceedings as may be necessary and proper, appearing therein for such purpose; and it shall be the duty of the several State's Attorneys to render assistance therein when requested by the Attorney General so to do. [Amended by act approved June 28. L. 1913, p. 513.]

Appraisement is made by taking cash value of all estates, annuities and life estates or for terms of years, and the tax to which the same is liable be fixed by the county judge. The appraiser should allow the value of the estate received by each residuary legatee under the will, and, in doing so, should deduct the gifts and legacies preceding the residuary clause of the will. *Ayers vs. Trust Co.*, 187—61.

Fair cash value of capital stock may be fixed by market quotations and other evidence; what it would bring, not at a forced sale, but under fair conditions and in ordinary course of business at or about testator's death. *Walker vs. P.*, 192—110.

In determining the amount of the estate on which to assess inheritance tax, only indebtedness of decedent, and expenses of administration may be deducted. Money bona fide expended in actual litigation might be classed as expenses of administration, and be deducted, but money paid an heir to compromise his claim cannot be deducted. *In re Estate of Graves*, 242—212.

It was not proper in compiling the indebtedness of the estate which was to be deducted, to apply it proportionately against all the real estate, foreign and domestic, as that would operate to place part of the tax on the foreign lands, by increasing that taxable here. *Connell vs. Crosby*, 210—380.

The expense of a trustee in defending suit by the heirs should be deducted. *Connell vs. Crosby*, 210—380.

In determining amount of estate upon which to assess inheritance tax, only indebtedness of decedent, and expenses of administration may be deducted. *In re Estate of Graves*, 242—212; *People vs. Tatge*, 267—634.

The proceeding is a special statutory one. *People vs. Mills*, 247—620; *People vs. Schaefer*, 266—334, 342.

On appeal to county court in an inheritance tax proceeding the trial is *de novo*. *People vs. Mills*, 247—620.

Finding of county court in appraisement proceeding fixing value of notes at several thousand dollars less than the face value of the notes cannot stand on appeal where there is nothing whatever in the testimony to indicate that such notes were not worth their face value. *People vs. Penniston*, 262—191.

Error in fixing inheritance tax on some other basis than market value of decedent's property at time of his death must be availed of by appeal from the order fixing the tax and cannot be availed of in a collateral proceeding to collect the tax. *Hanberg vs. Morgan*, 263—616.

Notice of appraisement for inheritance tax held sufficient. *Hanberg vs. Morgan*, 263—616.

A judgment for inheritance tax is a separate judgment as to each item of the tax. *People vs. Schaefer*, 266—334.

If the beneficiaries of an estate in good faith compromise a claim for an actual indebtedness and pay it or become liable therefor, the estate to which the beneficiaries succeed is decreased to such amount and it should be deducted in computing the inheritance tax. *People vs. Tatge*, 267—634, distinguishing *In re Graves*, 242—212.

Power of county court to modify its order as to inheritance tax. *People vs. Kellogg*, 268—489.

To enable the county court to hear and determine whether an inheritance tax is due on the succession to property it must have jurisdiction over the property or the beneficiary and having jurisdiction of the property may determine amount of tax, whether property belongs to residents or not. *Oakman vs. Small*, 282—360.

On an appeal by the Attorney General, the county court is not authorized to assess the costs against the people. *People vs. Pasfield*, 284—450, 457.

All debts and claims against deceased's estate and expenses of administration must first be deducted from gross value of decedent's property transferred, before the State inheritance tax shall be computed and the Federal Estate Tax must be deducted as a part of the expense of administration. *People vs. Pasfield*, 284—450; same vs. *Northern Trust Co.*, 289—475.

Fees of county clerks—Inheritance tax attorney—Appointment authorized—Salary—Fees generally.] Section 12. The fees of the clerk of the County Court in inheritance tax matters in the respective counties of this State, as classified in the Act concerning fees and salaries, shall be as follows:

In counties of the first and second class, for services in all proceedings in each estate before the county judge the clerk shall receive a fee of five dollars. In all such proceedings in counties of the third class, the clerk shall receive a fee of ten dollars. Such fees shall be paid by the county treasurer, on the certificate of the

county judge, out of any money in his hands, on account of said tax. In counties of the third class, the Attorney General shall designate an assistant or assistants Attorney General, whose special duty it shall be to attend to all matters pertaining to the enforcement of this Act in respect to the appraisement, assessment and collection of the inheritance tax in such counties. The salaries of such assistants shall be as follows: One Assistant Attorney General, whose salary for the month of January, 1916, shall be twenty-nine hundred sixteen dollars and sixty-six cents, and thereafter five thousand dollars per annum payable in monthly installments; the salary of each of two Assistants Attorney General, for the month of January, 1916, shall be twenty-three hundred thirty-three dollars and thirty-three cents, and thereafter four thousand dollars per annum payable in monthly installments; the salary of one Assistant Attorney General for the month of January, 1916, shall be twenty hundred forty-one dollars and sixty-two cents, and thereafter thirty-five hundred dollars per annum payable in monthly installments. In counties of the third class, the clerk of the County Court may appoint a clerk in the office of the clerk of said court, to be known as the "inheritance tax clerk," whose compensation shall be fixed by the county judge, not to exceed fifteen hundred dollars per year, and not to exceed the fee earned in said office in inheritance tax matters, the surplus of such fees over said compensation so fixed to be turned into the county treasury. In addition to the above, the clerk of the County Court shall be entitled, in all suits brought for the collection of delinquent inheritance tax, and all contested inheritance tax cases appealed from the county judge to the County Court, and in all appeals from the County Court to the Supreme Court, the same fees as are now, or which may hereafter be, allowed by law in suits at law, or in the matter of appeals at law, to or from the County Court, which fees shall be taxed as costs and paid as in other cases at law; and in all cases arising under this Act, including certified copies of documents or records in his office, for which no specific fees are provided, the clerk of the County Court shall charge against and collect from the persons applying for, or entitled to such services, or certified copies, the same fees as are now, or which may hereafter be, allowed for similar services or certified copies in said court, and for recording inheritance tax receipts required to be recorded in his office, he shall receive the same fees which are now or hereafter may be allowed by law to the recorder of deeds for recording similar instruments. [Amended by act approved December 3, 1915. Spl. Sess. Laws 1915, p. 35.]

Appraiser—Penalty for receiving fee or reward.] Section 13. Any appraiser appointed by this act, who shall take any fee or reward from any executor, administrator, trustee, legatee, next of kin or heir of any decedent, or from any other person liable to pay said tax or any portion thereof, shall be guilty of a misdemeanor, and upon conviction in any court having jurisdiction of misdemeanors, he shall be fined not less than two hundred and fifty dollars nor more than five hundred dollars and imprisoned not exceeding ninety days; and in addition thereto the county judge shall dismiss him from such service.

Jurisdiction of county court over property of non-resident decedent.] Section 14. The county court in the county in which the property is situated of the decedent, who was not a resident of the State or in the county of which the deceased was a resident at the time of his death, shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this act, and the county court first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other.

Inheritance tax cases are appealable directly from the County Court to the Supreme Court and the People may appeal and without bond. *People vs. Sholen*, 238—203.

Failure to pay tax—Proceedings in county court.] Section 15. If it shall appear to the county court that any tax accruing under this act has not been paid according to law, it shall issue a summons summoning the persons interested in the property liable to the tax to appear before the court on a day certain, not more than three months after the date of such summons, to show cause why said tax should not be paid. The process, practice and pleadings, and the hearing and determination thereof, and the judgment in said court in such cases shall be the same as those now provided, or which may hereafter be provided in probate cases in the county courts in this State, and the fees and costs in such cases shall be the same as in probate cases in the county courts of this State.

Attorney General to enforce payment—Proceedings.] Section 16. Whenever it appears that any tax is due and unpaid under this Act, and the persons, institutions or corporations liable for said tax have refused or neglected to pay the same, it shall be the duty of the Attorney General, if he has proper cause to believe a tax is due and unpaid, to prosecute the collection of the same by a bill in chancery, filed in the name of the People of the State of Illinois, to enforce the lien of inheritance tax, or, if there be grounds for the same, to secure an injunction against the transfer and delivery or other disposition of property subject to the lien for the payment

of the inheritance tax, and the County Courts are invested with full jurisdiction to hear and determine such suits. The process, practice and proceedings shall be the same as in cases in chancery, except that the answer of the defendant need not be under oath.

In addition to the remedy hereinabove provided, any inheritance tax due and unpaid may be recovered in an action of assumpsit brought by the Attorney General, in the name of the People of the State of Illinois, against any person liable for such tax and the Attorney General is hereby authorized to bring such action in any court having jurisdiction. [Amended by act approved June 28, 1913. L. 1913, p. 513.]

County judge and county clerk—Quarterly statements to county treasurer.] Section 17. The county judge and county clerk of each county shall, every three months, make a statement, in writing, to the county treasurer of the county of the property from which or the party from whom he has reason to believe a tax under this Act is due and unpaid.

It shall be the duty of the county treasurer on the first day of January, April, July and October of each year to make and transmit to the Attorney General a statement of the inheritance tax due and unpaid in all estates in which the county judge, or County Court, as the case may be, has levied and assessed such tax as the same appears from the certified copy of the orders of the county judge, or the certified copy of the judgment of the County Court assessing and fixing such tax on file in his office: Provided, in case an appeal shall be taken from the county judge to the County Court in any case, such statement shall not include the estate in which such appeal is pending and undisposed of. [As amended by act approved June 28, 1913. L. 1913, p. 513.]

Section 18. Repealed.

State treasurer shall furnish book to county judge.] Section 19. The treasurer of the State shall furnish to each county judge a book, in which he shall enter the returns made by appraisers, the cash value of annuities, life estates and terms of years and other property fixed by him, and the tax assessed thereon and the amounts of any receipts for payments thereof filed with him, which books shall be kept in the office of the county judge as a public record.

Payment by the county to state treasurer—Receipt—Report to auditor semi-annually.] Section 20. The treasurer of each county shall collect all such taxes and on the first day of each and every month transmit all such taxes so collected prior thereto, and not yet transmitted, to the State Treasurer, who shall give him a receipt therefor, of which collection and payment he shall make

report under oath to the Auditor of Public Accounts, on the first day of each and every month, stating for what estate paid, and in such form and containing such particulars, as the Auditor may prescribe. If any county treasurer shall fail to pay to the State Treasurer all taxes that may be due and payable under this act, as prescribed herein, such county treasurer shall pay to the State, as a penalty for such failure, a sum of money equal to the interest on such taxes at the rate of one-tenth of one per cent per day from the time such taxes are collected by said county treasurer until such taxes are paid. The sureties upon the official bond of such county treasurer shall be security for the payment of such penalty. The penalty in this section provided may be recovered in an action of debt against such county treasurer and his sureties aforesaid, in the name of the people of the State of Illinois, in any court of competent jurisdiction within the county wherein such county treasurer is resident; and such penalty, when recovered, shall be paid into the State treasury. Such action shall be brought by the State Treasurer within ten days after the failure of such county treasurer to pay to the State Treasurer any taxes collected by him, at the time required by this Act. Failure to bring suit within such time shall not prevent the bringing of such suit thereafter. And it is hereby made the duty of the State Treasurer to make necessary and proper investigations to determine what inheritance tax should be paid: Provided, however, that this section shall not invalidate or increase the liability upon the bond of any county treasurer in force prior to the passage of this act, and that to such extent as its application to any such existing bond would result in invalidating such bond or increasing the liability thereon, this section shall be inapplicable thereto. [Amended by Act filed May 7, in force July 1, 1917. L. 1917, p. 656.]

Collection expenses—Retention by county.] Section 21. The treasurer of each county shall retain and pay into the county treasury two per cent (2%) on all taxes paid and accounted for by him under this Act, in full for all services and expenses rendered, incurred or paid by the county or any of its officers, agents, or employees, in collecting and paying the same. [Amended by act approved June 25. L. 1915, p. 572.]

The provision authorizing county treasurer to retain commissions is unconstitutional. *Jones vs. O'Connell*, 266—443, *County of Lake vs. Westerfield*, 268—537.

Receipt from county treasurer—Sealing and recording same.] Section 22. Any person or body politic or corporate shall, upon the payment of the sum of fifty cents, be entitled to a receipt from the

county treasurer of any county or the copy of the receipt at his option that may have been given by said treasurer for the payment of any tax under this act, to be sealed with the seal of his office, which receipt shall designate on what real property, if any, of which any deceased may have died seized, said tax has been paid and by whom paid, and whether or not it is in full of said tax; and said receipt may be recorded in the clerk's office of said county in which the property may be situated, in a book to be kept by said clerk for such purpose.

Liability to taxation — How determined — Appeal to supreme court.] Section 23. When any person interested in any property in this State, which shall have been transferred within the meaning of this act shall deem the same not subject to any tax under this act, he may file his petition in the county court of the proper county to determine whether said property is subject to the tax herein provided, in which petition the county treasurer and all persons known to have or claim any interest in said property shall be made parties. The county court may hear the said cause upon the relation of the parties and the testimony of witnesses, and evidence produced in open court, and, if the court shall find said property is not subject to any tax, as herein provided, the court shall, by order, so determine; but if it shall appear that said property, or any part thereof, is subject to any such tax, the same shall be appraised and taxed as in other cases. An adjudication by the county court, as herein provided, shall be conclusive as to the lien of the tax herein provided upon said property, subject to appeal to the supreme court of the State by the county treasurer, or attorney general of the State, in behalf of the people, or by any party having an interest in said property. The fees and costs in all cases arising under this section shall be the same as are now or may hereafter be allowed by law in cases at law in the county court.

The county court has jurisdiction to entertain a proceeding to determine the question of liability for an inheritance tax, and on appeal from an order of the county judge assessing the tax the county court may determine both the question of liability and the matter of correct appraisal of the property and assessment thereon. *People vs. Baldwin*, 287—87.

Continuation of lien—Limitation.] Section 24. The lien of the collateral inheritance tax shall continue until the said tax is settled and satisfied: Provided, that said lien shall be limited to the property chargeable therewith: And, provided, further, that all inheritance taxes shall be sued for within five days after they are due and legally demandable, otherwise they shall be presumed to be paid and cease to be a lien as against any purchaser of real estate.

Section 22 of Act of 1895 identical with the above section bars the lien against the property in the hands of purchasers, but does not bar the collection of the taxes from the person liable. *Hauberg vs. Morgan*, 263—616.

This section limits lien on land for the tax to five years only in case the land is sold. *People vs. Baldwin*, 287—87.

The word "purchaser" is used in its ordinary sense and means one who buys and pays a valuable consideration for property, and does not include a devisee. *People vs. Baldwin*, 287—87.

This section is positive that lien shall continue until it is settled and satisfied, there is no limitation as to lien as long as real estate continues to be property of one liable for the tax until the tax is fully paid, and he remains personally liable although he may have sold the real estate. *People vs. Baldwin*, 287—87.

Highest rate in certain cases—Return of tax wrongfully imposed—Other provisions.] Section 25. When property is transferred or limited in trust or otherwise, and the rights, interest or estates of the transferees or beneficiaries are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed upon said transfer at the highest rate which, on the happening of any of the said contingencies or conditions, would be possible under the provisions of this article, and such tax so imposed shall be due and payable forthwith by the executors or trustees out of the property transferred: Provided, however, that on the happening of any contingency whereby the said property, or any part thereof is transferred to a person, corporation or institution exempt from taxation under the provisions of the inheritance tax laws of this State, or to any person, corporation or institution taxable at a rate less than the rate imposed and paid, such person, corporation or institution shall be entitled to a return of so much of the tax imposed and paid as is the difference between the amount paid and the amount which said person, corporation or institution should pay under the inheritance tax laws, with interest thereon at the rate of three per centum per annum from the time of payment. Such return of over-payment shall be made in the manner provided for refunds under section eight.

. Estates or interests in expectancy which are contingent or defeasible and in which proceedings for the determination of the tax have not been taken or where the taxation thereof has been held in abeyance, shall be appraised at their full, undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or on account of any valuation theretofore made of the particular estates for the purposes of taxation, upon which said estates or interests in expectancy may have been limited.

Where an estate for life or for years can be divested by the act or omission of the legatee or devisee it shall be taxed as if there were no possibility of such divesting.

This section construed, held constitutional and enforceable according to its terms. *People vs. Byrd*, 253—223; *People vs. Freese*, 267—164; *People vs. Starring*, 274—289; *People vs. Donahoe*, 276—88; *People vs. Lowenstein*, 287—126.

The court should take the highest amount which in any contingency may become liable to the tax, and if it is possible that upon the happening of the event which will vest a contingent remainder the entire remainder may go to one person, the court should compute the tax upon the entire remainder, less the statutory deduction the one remainder-man would be entitled to. *People vs. Byrd*, 253—223; *People vs. Starring*, 274—293.

Where testator bequeathed a contingent remainder to such of 41 nieces and nephews as may be alive at death of life tenant, the highest amount that in any contingency would become subject to the tax must be taken, so the remainder, after deducting the net value of the life estate and one exemption of \$2,000 which is exemption allowed in case of transfer to a nephew or niece, should be taxed at two per cent. *People vs. Freese*, 267—164.

Section applies to vested as well as contingent estates whenever such vested estates are liable to be defeated, extended or abridged by the conditions or contingencies provided in a will. *People vs. Donahoe*, 276—88.

Section applies to any property depending upon contingencies or conditions whether or not there is a trust involved. *People vs. Lowenstein*, 284—126.

A will which creates a trust in favor of the two daughters of testatrix for life with remainder to their children, with a subsequent provision that in case both daughters shall die without leaving issue the property shall be distributed according to the laws of descent passes no possible interest to nephew of testatrix as warrant a tax assessed against a nephew. *People vs. Camp*, 285—511.

Paragraph 2 applies to contingent estate, where at the time said section was enacted, the tax has been held in abeyance by the court because the estate had not yet vested. *People vs. Lowenstein*, 284—126.

Compounding of claims—Powers of state treasurer and attorney general.] Section 26. The state treasurer, by and with the consent of the attorney general expressed in writing, is hereby empowered and authorized to enter into an agreement with the trustees of any estate in which remainders or expectant estates, have been of such a nature, or so disposed and circumstanced that the taxes therein were held not presently payable, or where the interests of the legatees or devisees were not ascertainable under an act to tax gifts, legacies, and inheritances, etc., in force July 1, 1885, and amendments thereto; and to compound such taxes upon such terms as may be deemed equitable and expedient; and to grant discharge to said trustees upon the payment of the taxes provided for in such composition: Provided, however, that no such

composition shall be conclusive, in favor of said trustees as against the interests of such cestuis que trust as may possess either present rights of enjoyment, or fixed, absolute or indefeasible rights of future enjoyment, or of such as would possess such rights in the event of the immediate termination of particular estates, unless they consent thereto, either personally, when competent, or by guardian. Composition or settlement made or effected under the provisions of this section shall be executed in triplicate, and one copy filed in the office of the state treasurer, one copy in the office of the clerk of the county court wherein the appraisement was had or the tax was paid, and one copy delivered to the executors, administrators or trustees who shall be parties thereto.

Guardian for infant.] Section 27. If it appears at any stage of an inheritance tax proceeding that any person known to be interested therein is an infant or person under disability, the county judge may appoint a special guardian of such infant or person under disability.

The fees of guardian ad litem cannot be paid out of tax fund in hands of county treasurer. *People vs. Pasfield*, 284—450.

Bequests to hospitals, churches and other organizations exempted.] Section 28. When the beneficial interests of any property or income therefrom shall pass to or for the use of any hospital, religious, educational, bible, missionary, tract, scientific, benevolent or charitable purpose, or to any trustee, bishop or minister of any church or religious denomination, held and used exclusively for the religious, educational or charitable uses and purposes of such church or religious denomination, institution or corporation, by grant, gift, bequest or otherwise, the same shall not be subject to any such duty or tax, but this provision shall not apply to any corporation which has the right to make dividends or distribute profits or assets among its members.

The amendatory Act of 1901 to the Inheritance Tax Act was not retroactive, and where, at the time the act became effective, a tax was due, it was not affected by that act. Here, exemption claimed on bequest for educational purposes. *Connell vs. Crosby*, 210—380.

Under the amended inheritance tax law (Sec. 2½), exempting bequests to charitable institutions, where the deceased died before this amendment took effect, the tax becoming payable then, it was not affected by the amendment. This amendment is not self-executory, but requires action by the county judge, and it repeals only so much of the original act as makes such legacies taxable. It does not, therefore, operate to render the judge without jurisdiction in the matter. *Provident School Assn. vs. People*, 193—495.

Under the amendatory Inheritance Tax Act of 1901, exempting rights or interests from tax when they shall pass to certain benevolent or charitable

institutions, a foreign corporation is not included. This Act is not unconstitutional, for it deals alike with all of the same class. In re Estate of Speed, 216—23, affirmed 203 U. S. 553.

Section 28 is only section exempting property from the tax. *People vs. Richardson*, 269—275, 276.

Transfer defined.] Section 29. When property, or any interest therein or income therefrom, shall pass to or for the use of any person, institution or corporation by the death of another, by deed, instrument or memoranda, such passing shall be deemed a transfer within the meaning of this act, and taxable at the same rates, and be appraised in the same manner and subjected to the same duties and liabilities as any other form of transfer provided in this act.

Certified copies of papers to be furnished—Fees for same.] Section 30. On the written request of the county treasurer or county judge, in the county wherein an appraisal has been initiated, the clerk of the county court and in counties having a probate court, the clerk of the probate court and the recorder of deeds shall furnish certified copies of all papers within their care or custody, or records material in the particular appraisal, and the said clerk and recorder shall receive the same fee or compensation for such certified copies as they would be entitled by law in other cases, which shall be paid to them by the county treasurer of the proper county, out of moneys in his hands on account of inheritance tax collections, on the presentation of itemized bills therefor, approved by the county judge of the proper county.

Repeal.] Section 31. That "An Act to tax gifts, legacies and inheritances in certain cases, and to provide for the collection of the same," approved June 15, 1895, in force July 1, 1895, as amended by act approved May 10, 1901 in force July 1, 1901, and all laws or parts of laws inconsistent herewith be and the same are hereby repealed: Provided, however, that such repeal shall in no wise affect any suit, prosecution or court proceeding pending at the time this act shall take effect, or any right which the State of Illinois may have at the time of the taking effect of this act, to claim a tax upon any property under the provisions of the act or acts hereby repealed, for which no proceeding has been commenced; and all appeals and rights of appeal in all suits pending, or appeals from assessments of tax made by appraisers' reports, orders fixing tax or otherwise existing in this State at the time of the taking effect of this act.

Under act of 1895 an estate in remainder subject to defeasance during continuance of life estate was not subject to tax, nor is it subject to the tax

under the proviso of repealing clause of act of 1909 or saving clause Chapter 131, R. S., where the death of decedent did not occur until after act of 1909 took effect. *People vs. Carpenter*, 274—103.

AN ACT TO PROVIDE FOR CASUAL DEFICITS IN REVENUES.

AN ACT to provide for casual deficits or failures in revenues. [Approved April 2, 1897. In force July 1, 1897. L. 1897, p. 287.]

Whenever casual deficits or failures in the revenues of the state occur.] Section 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly, That whenever casual deficits or failures in revenues of the State occur, in order to meet the same, the governor, auditor and treasurer are hereby authorized to contract debts, never to exceed in the aggregate the sum of two hundred and fifty thousand dollars, and moneys thus borrowed shall be applied to the purpose for which they were obtained, or to pay the debts thus created, and to no other purpose: Provided, That all monies so borrowed shall be borrowed for no longer time than two years.

Loan—How made and when awarded.] Section 2. Whenever the borrowing of money under section one of this act is contemplated, it shall be the duty of the governor, auditor and treasurer to advertise for proposals for such loan, for ten days, in one of the daily newspapers printed in each of the cities of New York, Chicago and Springfield, setting forth in said advertisements the amount of debt proposed to be contracted and the time and place for the payment of the principal and interest. And the loan shall be awarded to the person or persons agreeing to take it at the lowest rate of interest not exceeding five per cent per annum.

Bonds or certificate to be registered—Interest and principal—How paid—Appropriation.] Section 3. There shall be prepared under the direction of the officers named in this act such form of bonds or certificates as they shall deem advisable, which, when issued, shall be signed by the governor, auditor and treasurer, and shall be registered by the auditor in a book to be kept by him for that purpose. The interest and principal of such loan shall be paid by the Treasurer out of the general revenue fund. There is hereby appropriated out of any money in the treasury a sum not exceeding the sum of two hundred and seventy thousand dollars, for the payment of the interest and principal of any debts contracted under this act.

The auditor of public accounts is hereby authorized and directed to draw his warrants on the state treasurer for the amount of all such payments.

AN ACT TO VALIDATE THE ACTS OF THE COUNTY BOARD.

AN ACT to make legal and valid the acts of the county board heretofore done in determining the amounts of all taxes to be raised for county purposes in their respective counties, and to make legal and valid the levy of taxes for county purposes thereunder. Approved and in force February 28, 1905. L. 1905, p. 359.]

Validating acts of county board, heretofore done in determining amount of taxes to be raised for county purposes.] Section 1. Be it enacted by the People of the State of Illinois represented in the General Assembly: That when the county board of any county heretofore in determining the amounts of all taxes to be raised for county purposes in any year, has at its September session in such year determined said amounts by naming a fixed and definite sum to be so raised without naming the particular or specific purposes for which said taxes, when collected, shall be appropriated, expended or raised, and when any county board heretofore in determining the amounts of all taxes to be raised for county purposes in any year, has at its September session in such year declared or provided that a certain number of cents on each one hundred dollars of valuation of property shall be raised for county purposes, not exceeding seventy-five cents on each one hundred dollars of such valuation and without naming the particular or specific purposes for which said taxes when collected shall be appropriated, expended or raised, and when any county board heretofore in determining the amounts of all taxes to be raised for county purposes in any year, has at its September session in such year declared or provided that a certain number of cents on each one hundred dollars of valuation of property shall be raised for county purposes not exceeding seventy-five cents on the one hundred dollars of valuation of property and has named the particular or specific purposes for which such taxes when collected shall be appropriated, expended or raised, such determination and the taxes assessed, levied or extended, shall be and are hereby declared to be legal and valid, anything in any law of this State to the contrary notwithstanding.

This Act operates to cure failure to state purpose of a county tax levy and such Act is not unconstitutional under Sec. 8 of Art. 9 of the Constitution, as the word "aggregate" does not imply that the particular purposes for which the taxes are levied shall be specified. A curative act may be passed as to any tax where the authority was not wanting. *People vs. R. R. Co.*, 219—94.

The curative act of 1905 (Laws of 1905, p. 359) did not operate to invalidate a tax levy declared invalid by decision of the Supreme Court for failing to state the purposes of the levy. *R. R. Co. vs. People*, 219—408.

This Act cures the defect in a tax of failing to specify the particular purposes for which said tax levy was made. *Bowyer vs. People*, 220—93; *People vs. R. R. Co.*, 219—94.

Emergency.] Section 2. Whereas, an emergency exists, therefore this act shall take effect and be in force from and after its passage.

VALIDATION OF TAX LEVIES FOR 1916.

AN ACT to make legal and valid annual appropriation bills for the fiscal year A. D. 1916, and taxes levied and extended thereon in counties by law required to adopt an annual appropriation bill in the first quarter of the fiscal year and to publish the annual appropriation bill in a newspaper, and to validate court proceedings now pending or hereafter to be brought for the collection of such taxes.

Section 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly: That when any county board by law is required within the first quarter of the fiscal year to adopt and, heretofore within the first quarter of the fiscal year A. D. 1916, has adopted a resolution termed the annual appropriation bill in and by which resolution such county board has appropriated such sums of money as might then be necessary to defray all necessary expenses and liabilities of such county to be by such county paid or incurred during and until the time of the adoption of the next succeeding annual appropriation bill, which said appropriation bill, by the provision of any law then in force, should not take effect until after it had been once published in a newspaper, and which said appropriation bill was not published in such a newspaper or in such manner or time as was then required by law, then in each and every such case, such annual appropriation bill and all tax levies based thereon and heretofore passed or adopted by such county board and the county taxes extended on the collectors warrant pursuant to such tax levy or levies, and all court proceedings now pending or hereafter to be brought to enforce the collection of such taxes, are each and all hereby declared to be as legal and valid from the beginning as they, each and every one of them would have been if such annual appropriation bill had been duly published in such a newspaper and in the manner and at the time then required by law: Provided, that nothing herein contained shall have the effect to validate more than one sufficient levy for the same appropriations in said fiscal year A. D. 1916, and where heretofore more than one levy has in fact been made or attempted to be made for the same appropriations in said fiscal year the taxes extended thereon shall have the same force and validity in the same amounts and to the same extent as they would have had if one sufficient levy had been made for said appropriations and the taxes extended thereon.

TAX FOR STATE PURPOSES.

AN ACT to provide for the necessary revenue for State purposes. Approved July 28, 1919. In force July 1, 1919. L. 1919, p. 864.

Revenue fund for general state purposes and for state school purposes.] Section 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly: That there shall be raised, by levying a tax by valuation upon the assessed taxable property of the State, the following sums for the purposes herein-after set forth:

For general State purposes, to be designated "Revenue Fund," the sum of fourteen million dollars (\$14,000,000.00) upon the assessed value of the property for the year A. D. 1919; fourteen million dollars (\$14,000,000.00) upon the assessed value of the property for the year A. D. 1920; and for State school purposes to be designated "State School Fund" the sum of six million dollars (\$6,000,000.00) upon the assessed taxable property for the year A. D. 1919, and the sum of six million dollars (\$6,000,000.00) upon the assessed taxable property for the year A. D. 1920, in lieu of the two mill tax.

Officers to compute rates per cent. required—Auditor to certify—Repeal.] Section 2. The Governor, the Auditor and Treasurer shall annually compute the several rates per cent required to produce not less than the above amounts, anything in any other Act providing a different manner of ascertaining the amount of revenue required to be levied for State purposes to the contrary notwithstanding; and when so ascertained, the Auditor shall certify to the county clerk the proper rates per cent therefor, and also such definite rates for other purposes as are now or may be hereafter provided by law, to be levied and collected as State taxes, and all other laws and parts of laws in conflict with this Act are hereby repealed.

Taxes for the year 1911 on real estate were assessed as of April 1, 1911, and became a lien on that date, although the assessment may not have been actually made until after that date. *Morrison vs. Moir Hotel Co.*, 204A—433.

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